the lands covered by the transfer that would justify a higher payment.

* * * * *

(d) Revising paragraph (d) to read:

* * * * *

(d) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the Mining Supervisor in accordance with 30 CFR Part 211.

§ 3473.4 [Amended]

156. Section 3473.4 is amended by:

(a) Amending paragraph (a) by adding at the end of the first sentence of the paragraph the phrase "in accordance with 30 CFR Part 211" and by removing the second sentence of the paragraph in its entirety; and

(b) Removing paragraphs (c), (d) and (e) in their entirety.

§ 3474.1 [Amended]

157. Section 3474.1 is amended by:

(a) Revising paragraph (a)(2) to read:

(a) * * *

(2) Cash bond; or

* * * * *

(b) Revising paragraph (c) to read:

* * * * *

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

§ 3474.2 [Amended]

158. Section 3474.2 is amended by:

(a) Revising paragraph (a) to read:

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

* * * * *

(b) Amend paragraph (b) by removing the figure "§ 3410.3–5" and replacing it with the figure "3410.3–4"; and

(c) Adding a new paragraph (c) to read:

* * * * *

(c)(1) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

(2) When an LMU is terminated, the LMU bond shall terminate. Individual leases remaining from the LMU shall be covered by lease bonds in the manner prescribed by the Mining Supervisor.

§ 3474.3 [Amended]

159. Section 3474.3 is amended by:

(a) Revising paragraph (b) to read:

* * * * *

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of a cooperative agreement governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

(2) After consultation with the Surface Mining Officer, the authorized officer may release the amount of any outstanding bond which is related to, and is not necessary to secure, the performance of reclamation within a permit area.

(c) Removing paragraph (c) in its entirety.

160. Subpart 3475 is amended by inserting a new § 3475.1 to read:

§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or regulations and may add such additional stipulations and conditions as he/she deems appropriate.

§§ 3475.1, 3475.2 and 3474.3 Redesignated as §§ 3475.2, 3475.3 and 3475.4

161. Sections 3475.1, 3475.2, and 3474.3 are renumbered sections 3475.2, 3475.3, and 3475.4 respectively.

§ 3475.4 Redesignated as § 3475.5

162. Section 3475.4 is renumbered § 3475.5 and is revised to read:

§ 3475.5 Diligent development and continued operation.

In accordance with 30 CFR Part 211, each lease shall require:

(a) Diligent development; and

(b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advanced royalty."

§ 3475.5 Redesignated as § 3475.6

163. Section 3475.5 is renumbered § 3475.6 and is revised to read:

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied by the Minerals Management Service in accordance with 30 CFR 211.80.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

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Friday
July 30, 1982

Part VI

Department of the Interior

Minerals Management Service

Coal Exploration and Mining Operations; Delineation of Functions and Responsibilities

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 211

Coal Exploration and Mining Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The rules of this Part delineate the functions and responsibilities of the Minerals Management Service (MMS) for regulating both exploration for Federal coal and mining operations on Federal coal regarding production, development, resource recovery and protection, royalties, diligent development, continued operations, advance royalty, and maximum economic recovery (MER) under the Mineral Leasing Act of 1920, as amended (MLA). These rules streamline and consolidate in this Part regulations previously promulgated by the Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM) regarding MMS responsibilities under MLA for management of operations on Federal coal.

EFFECTIVE DATE: August 30, 1982.

ADDRESS: Acting Chief, Onshore Solid Minerals Division, Minerals Management Service, Mail Stop 653, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas V. Leshendok, (703) 860–7506, (FTS) 928–7506, or Mr. Harold W. Moritz, (703) 860–7136, (FTS) 928–7136.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Mr. Harold W. Moritz, Chief, Energy Section, Branch of Operations, MMS; and Mr. Allen B. Agnew, Mr. Ralph J. Blumer, and Mr. Herbert B. Wincentsen, all of the Energy Section, Branch of Operations, MMS; assisted by other MMS field and headquarters personnel and the Office of the Solicitor, Department of the Interior (DOI).

The predecessor of MMS, Conservation Division of the U.S. Geological Survey, published the 30 CFR Part 211 proposed rulemaking on December 16, 1981 (46 FR 61424). The Department of Energy (DOE) published the 10 CFR Part 378 proposed rulemaking related to Diligence on Federal Coal Leases on December 22, 1981 (46 FR 62226). Comments for both sets of proposed rulemakings were invited for 60 days ending February 16 and 22, 1982, respectively. Upon enactment of Pub. L. 97–100 on December 23, 1981, authority for promulgating rules related to diligence requirements for Federal coal reverted to DOI. Notice of this fact was published in the **Federal Register** on January 7, 1982 (47 FR 819). The MMS subsequently adopted and received all public comments on DOE's proposed rulemaking. As a result of the MMS and DOE 1981 proposed rulemaking, more than 150 comments were received. In addition, more than 25 comments were received on an earlier 30 CFR Part 211 proposed rulemaking on May 19, 1980 (45 FR 32715). All comments are addressed in the **SUPPLEMENTARY INFORMATION** of this final rulemaking and the text of the 30 CFR Part 211 rules has been changed as appropriate.

Responsibilities under MLA

The MLA has been amended numerous times, most recently by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) (Pub. L. 94–377) and by Pub. L. 95–554. The DOI is responsible for management of mining operations on Federal coal pursuant to the requirements of MLA. The MMS exercises the Secretary of the Interior's (Secretary's) authority to regulate Federal coal mining operations in compliance with MLA requirements concerning production, development, resource recovery and protection, MER, diligent development, continued operation, and rentals and royalties on producing Federal coal leases.

This final rulemaking for 30 CFR Part 211: (1) Separates responsibilities of OSM under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for mining on Federal coal (30 CFR Chapter VII, Subchapter D) from responsibilities of MMS under MLA; (2) retains and clarifies MMS responsibilities under requirements of MLA and the 30 CFR Part 211 regulations of May 17, 1976, and August 22, 1978, for exploration, production, development, resource recovery and protection, and royalties; and (3) revises and clarifies the existing regulations and requirements of FCLAA, for exploration, MER, resource recovery and protection plans, and logical mining units (LMU's).

One general change which has been included in this final rulemaking is the revision of responsible officials' titles to reflect the creation of MMS on January 19, 1982 (47 FR 4751). These title changes do not change or alter the basic responsibility of these officials except for those detailed in the definitions section.

Relation to OSM's Federal Lands Program

These final rules no longer contain the regulations in the 1981 30 CFR Part 211 rules relating to the initial Federal Lands Program under Section 523 of SMCRA. Until final rulemaking is promulgated and implemented by OSM regarding the initial Federal Lands Program, the existing (1981 30 CFR Part 211) rules regarding OSM's initial Federal Lands Program shall remain in effect to the same extent they are now. These final rules are intended to eliminate any duplication of effort by MMS, OSM, and States regarding management of exploration and mining operations that involve Federal coal lands.

Exploration on Federal Lands

These final rules contain provisions under which MMS will have primary responsibility for exploration activities on unleased Federal lands, on leased Federal lands not in an approved permit area, and within an approved permit area prior to the commencement of mining operations. Until mining operations commence within an approved permit area, both MMS and BLM share responsibilities regarding exploration.

As a result of the public comments, MMS is considering entering into MMS/State agreements, under the authority of MLA, to allow States to assume a more active role in regulating exploration for leased Federal coal. When these rules are effective, MMS will initiate consultations with individual States to effect the preparation of such MMS/State agreements.

Comments Received on Proposed 30 CFR Part 211 and 10 CFR Part 378

General Comments

One comment concerned modification of a lease issued prior to August 4, 1976, under the provisions of Section 3 of MLA, as amended. The comment questioned whether such a modification after August 4, 1976, and prior to the lease readjustment date would be considered to be a lease readjustment, thus initiating new diligence requirements. A Section 3 modification is not a lease readjustment; the modified lease is not subject to the production requirements imposed by FCLAA.

Several comments stated that the proposed rules contained sufficiently different interpretations of concepts like LMU, MER, and diligent development to require a new environmental impact statement (EIS) or a supplemental EIS to the existing coal programmatic EIS before issuing these rules in final form.

The DOI considers the existing programmatic EIS to have evaluated a "worst case" situation under the alternatives to the perferred program. The preexisting diligence provisions under 43 CFR Group 3400 were built into the preferred alternative of the final programmatic EIS on the Federal Coal Management Program; however, the diligence provisions contained in this final rulemaking were considered under the alternatives to the preferred alternative. Thus, DOI has determined that the environmental assessment prepared on the final 43 CFR Part 3400 and 30 CFR Part 211 rules satisfies DOI's National Environmental Policy Act of 1969 (NEPA) obligations on these rules; no formal supplement to the final programmatic EIS is required.

Several comments requested that DOI extend the comment deadline for the proposed 30 CFR Part 211 rules in order to review those rules simultaneously with OSM rules. The DOI has set priorities for the final promulgation of this rulemaking which do not allow for any extensions of the comment period.

Two comments stated that the requirements regarding plans and maps in the proposed rules exceed both the reasonable planning expectations of a coal operation and the current industry standard for information. One comment stated further that the proposed rules reflect an underlying distrust and suspicion of the motives and integrity of the coal industry. The DOI disagrees with these conclusions. The DOI has determined that the requirements at 30 CFR Part 211 are necessary to enforce the provisions of MLA. In addition, most of the informational requirements at 30 CFR Part 211 do not place an additional burden on the coal industry since industry currently collects the data for its individual operations.

One comment stated that the effect of the proposed diligent development rules would be two large increases of production, one increase occurring around 1994 and the other occurring from 1994 to 2000. It is the position of DOI, if diligence rules generate production, that the current rules would cause a much larger increase in production by 1986. These final rules extend the period during which new operations may be initiated on leases issued prior to August 4, 1976.

One comment questioned whether failure to mine out the LMU recoverable coal reserves within the 40-year limit would preclude an operator/lessee from obtaining additional Federal leases under MLA. The answer is no; this is not prohibited under Section 2(a)(2)(A) of MLA.

Specific Comments

30 CFR 211.1 Scope, Purpose, and Responsibilities.

30 CFR 211.1(a)

Several comments addressed the relationship between OSM and MMS. Two comments were concerned that the rules apply only to Federal coal. These comments are discussed in the preamble discussion of comments received on 30 CFR 211.10 (b) and (c).

Several comments suggested that 30 CFR Part 211 and DOE's diligence rules be promulgated simultaneously. The proposed 10 CFR Part 378 diligence rules are incorporated in this final rulemaking.

One comment reflected confusion regarding the reorganization of royalty management functions. Ultimate responsibilities will be clarified upon full implementation of the new royalty management system. The 30 CFR 211.100, et seq., consolidates certain royalty management functions that were proposed at 30 CFR Part 211 on December 16, 1981. Future rules related to royalty management for Federal coal will also be consolidated at 30 CFR 211.100, et seq.

30 CFR 211.1(b)

Several comments stated that the purpose paragraphs should be dropped or streamlined. The MMS believes that the purpose paragraphs concisely state its responsibilities. These comments were rejected.

One comment stated that the rules contained redundancies and contradicting directives. The MMS believes that the rules do not contain any contradictions or needless redundancies. A major focus of this rulemaking has been the elimination of redundancies and contradictions, both within these rules and between these rules and those of other agencies. The MMS believes that this streamlining has been accomplished.

One comment approved of the discussion of the Federal and State roles regarding the coal operating rules. The MMS believes that Federal and State roles in the rules of this Part are clearly explained. As a result of specific comments on the text of the rules, these roles have been further clarified. See also the discussion of comments received on 30 CFR 211.10(b) and (c).

One comment questioned the meaning of the term "unnecessary damage" as used at 30 CFR 211.1(b) and whether mining constitutes a significant damage. Unnecessary damage, as used at 30 CFR 211.1(b), means damage to the coal-bearing or mineral-bearing formations which has affected or may affect other minerals due to practices or operations performed by the operator/lessee that may have been avoidable. Mining, itself, does not constitute unnecessary damage to the coal-bearing or mineral-bearing formations; however, improper mining sequences or techniques may produce an undesirable and unnecessary waste of the resource.

30 CFR 211.1(c)(3)

Several comments suggested that "licenses to mine" be restricted to MLA responsibilities. The BLM is responsible for the promulgation of rules regarding the issuance of licenses to mine (43 CFR 3400). The 30 CFR 211.1(c)(3) reiterates that responsibility.

30 CFR 211.1(c)(4)

One comment stated that DOE rules for diligent coal development must not conflict with the revised 30 CFR Part 211 or with the State's authority to regulate coal mining on Federal lands. By incorporation of DOE diligence rules at 30 CFR Part 211, any conflicts have been eliminated. States cannot exercise the Secretary's responsibility to set diligence standards for Federal coal leases.

Due to incorporation of 10 CFR Part 378 at 30 CFR Part 211, and the revision of 30 CFR Part 211 to consolidate royalty management provisions, the sequencing at 30 CFR Part 211 has been changed as follows:

Proposed at 10 CFR 378	Proposed at 30 CFR 211	Codified at final 30 CFR 211
378.102		Deleted.
.002	211.2(a)(18)	211.2(a)(22).
.301(a)		211.20(b).
.301(b)		211.20(c)(1) and (2).
.301(c)		211.20(d).
.302 "Advance Royalty".		211.2(a)(1).
	211.2(a)(2)	211.2(a)(2).
	211.2(a)(3)	211.2(a)(4).
"Commercial Quantities".		211.2(a)(5).
"Continued Operation".		211.2(a)(7).
"Continued Operation Year".		211.2(a)(8).
	211.2(a)(8)	211.2(a)(9).
	211.2(a)(9)	211.2(a)(12).
"Diligent Development".		211.2(a)(13).
"Diligent Development Period".		211.2(a)(14).
	211.2(a)(10)	211.2(a)(15).
	211.2(a)(11)	211.2(a)(16).
	211.2(a)(12)	Deleted.
	211.2(a)(13)	211.2(a)(17).
	211.2(a)(14)	211.2(a)(18).
	211.2(a)(15)	211.2(a)(19).
	211.2(a)(16)	211.2(a)(20).
	211.2(a)(17)	211.2(a)(21).
"LMU Recoverable Coal Reserves".		211.2(a)(23).
	211.2(a)(20)	211.2(a)(24).
	211.2(a)(21)	211.2(a)(25).
	211.2(a)(22)	211.2(a)(26).
	211.2(a)(23)	211.2(a)(27).
	211.2(a)(5)	211.2(a)(29).

Proposed at 10 CFR 378	Proposed at 30 CFR 211	Codified at final 30 CFR 211
	211.2(a)(24)	211.2(a)(30).
	211.2(a)(25)	211.2(a)(31).
"Lessee"	211.2(a)(26)	211.2(a)(32).
	211.2(a)(27)	211.2(a)(33).
	211.2(a)(28)	211.2(a)(34).
	211.2(a)(29)	211.2(a)(35).
	211.2(a)(30)	211.2(a)(36).
"Recoverable Coal Reserves".	211.2(a)(4)	211.2(a)(37).
	211.2(a)(31)	211.2(a)(38).
	211.2(a)(32)	211.2(a)(39).
"Royalty Reporting Period".		211.2(a)(40).
	211.2(a)(33)	211.2(a)(41).
	211.2(a)(34)	211.2(a)(42).
.303(a)		211.10(b).
	211.10(b)	211.10(b) and (c).
	211.10(c), (d), and (e).	211.11(a), (b), and (c).
.303(b)		211.80(e)(1).
.303(c)		211.80(g)(2).
.304(a)	211.40(b)(2)	211.20(a)(1).
.304(b)	211.40(b)(2)	211.20(a)(2).
	211.40(b)(4)	211.20(a)(2).
.305(a)		211.21(a).
.305(b)		211.21(b).
.305(c)		211.21(c).
	211.40(b)(3)	211.22(a).
.306(a)		211.22(a)(1).
.306(b)		211.22(a)(2).
.306(c)		211.22(b).
.306(d)	211.40(b)(4)(iii)	211.22(b).
.306(e)		211.22(b).
	211.63(1), (m), (n), (o), and (p).	211.22(b).
.307(a)		211.23(a).
.307(b)		211.23(b).
.307(c)	211.40(b)(4)(ii) and 211.80(h)(4)(ii).	211.23(c).
.307(d)		211.23(d).
.307(e)		211.23(e).
.307(f)		211.23(f).
	211.40(b)(4)(i) and 211.80(h)(4)(i).	211.23(g).
.308(a)		211.24(a).
.308(b)		211.24(b).
.308(c)		211.24(c).
.308(d)		211.24(e).
.308(e)		211.24(f).
.309(a)		211.25(a).
.306(b)		211.25(b).
.310		Deleted.
	211.40(b)(9)	211.40(b)(1)
	211.40(c)(6)	211.40(c)(7).
	211.62(b)(7)	211.62(c).
	211.62(c)	211.62(d).
	211.80(h)(1)	211.80(e)(1) and (6).
	211.80(h)(4)(iii)	211.80(g).
	211.80(h)(2)	211.80(h)(1).
	211.80(h)(3)	Deleted.
	211.65	211.101.
	211.67	211.102.

Note.—Several definitions have been revised to reflect the formation of MMS or as a result of incorporation of comments.

30 CFR 211.2 Definitions.

Many comments stated that the definitions in 43 CFR Part 3400, 10 CFR Part 378, and 30 CFR Part 211 are inconsistent and that cross-references could eliminate this confusion. The proposed 10 CFR Part 378 is eliminated as a separate rulemaking; further coordination with BLM has eliminated other discrepancies.

30 CFR 211.2(a)(1) Advance Royalty.

One comment stated that payment of advance royalty should be allowed in lieu of diligent development, as well as continued operation. The advance royalty provisions in Section 7(b) of MLA state, in part, that the "Secretary of the Interior * * * may suspend the condition of continued operation upon the payment of advance royalties." The Section states further that "[n]othing in this subsection shall be construed to affect the requirement * * * relating to commencement of production at the end of ten years." Section 7(b) thus allows the Secretary to accept advance royalty in lieu of continued operation, but not in lieu of diligent development. Further, Section 7(a) of MLA, second sentence, states in part, that any Federal lease "not producing in commercial quantities at the end of ten years shall be terminated." This comment was rejected.

Two comments stated that it was not clear if advance royalty could be paid after production is achieved. Advance royalty can only be paid in lieu of continued operation. Continued operation commences with the first royalty reporting period following the production of 1 percent of the recoverable coal reserves. Therefore, until an operation has produced 1 percent of the recoverable coal reserves, advance royalty cannot be accepted. The language contained at 30 CFR 211.23 further clarifies MMS's implementation of this provision of MLA.

Two comments stated that the advance royalty provisions should be established so that Federal leases could be retained for a longer period without production. Section 7(b) of MLA prohibits the payment of advance royalty in the aggregate for a period greater than 10 years. These comments were rejected.

30 CFR 211.2(a)(4) Coal Reserve Base.

Two comments stated that coal reserve base calculations should be based upon existing published information, new unpublished information, or any combination thereof. These rules are not intended to require any additional data acquisition (drilling) to satisfy this requirement. The rules have been modified to reflect this position more clearly.

One comment suggested that the terms "coal reserve base" and "coal resources" appear to represent a generally reasonable and workable standard.

Several comments suggested that the term "coal reserve base" should be deleted from the rule, or modified to read "coal resource base." The MMS believes that coal reserve base is adequately defined and is an integral part of the determination of minable reserve base and recoverable coal reserves. These factors are, in turn, critical elements used in the determination of diligent development, continued operation, and MER. These comments were rejected.

Two comments stated that the depth criterion used for the inclusion of coal in the coal reserve base should be standardized for all coal grades (30 CFR 211.2(a)(4)(ii)). The depth criterion applies to all coal grades and is standardized in the definition of coal reserve base. These comments were rejected.

One comment questioned the economics of recovering coal beds lying at a depth greater than 3,000 feet. The 30 CFR 211.2(a)(4)(iv) adequately addresses this situation. This comment was rejected.

One comment stated that DOI should refrain from imposing its own profitability determination, in lieu of the lessee's analysis. It is not the intent of DOI to impose its own determination of profitability in lieu of an analysis conducted by an operator/lessee. See discussion of comments received on 30 CFR 211.2(a)(24).

One comment suggested the deletion of the terms "measured, indicated, and inferred" as the terms were considered to be confusing and overly inclusive. The MMS agrees and has deleted these terms from the definitions of "coal reserve base" and "coal reserves," the latter of which has been redefined as "recoverable coal reserves."

30 CFR 211.2(a) (4), (27), and (36) Coal Reserve Base, Minable Reserve Base, and Recoverable Coal Reserves.

The following discussion is presented to further clarify these terms.

A hypothetical federally leased 640-acre tract contains a single flat-lying uniform bed, 40-feet thick, of subbituminous coal at an average depth of 60 feet. Using the criteria at 30 CFR 211.2(a)(4), and assuming an average coal density of 1,770 tons per acre-foot, the *coal reserve base* is estimated to be 45.3 million tons ($640 \times 40 \times 1{,}770 = 45.312$, rounded to 45.3 million tons). All of the coal in the coal reserve base is commercially minable using standard industry surface mining techniques. However, one-third of the tract consists of an area classified as unsuitable for coal mining operations in accordance with SMCRA. This SMCRA classification results in a reduction of one-third from the coal reserve base. Therefore, the *minable reserve base* is 30.2 million tons (45.3 − 15.1 million tons). In conducting mining operations on this tract, it is estimated that 10 percent of the minable reserve base will be left in fenders and property barriers.

thus yielding 90 percent recovery. The *recoverable coal reserves* for this tract would be estimated to be 27.2 million tons (30.2×0.9=27.18, rounded to 27.2 million tons).

30 CFR 211.2(a) (5), (7), (13), and (14) Commercial Quantities, Continued Operation, Diligent Development, and Diligent Development Period.

One comment stated that the definition of commercial quantities should be revised to reflect more accurately the wording of MLA which does not specify a rate of production. Additionally, several comments stated that no rate should be set for commercial quantities and that diligent development should be based on development costs, or any other significant financial undertakings which would serve as valid indicators of attempts to develop a Federal lease. Although MLA does not specify a rate of production to be the definition of diligent development, it does require that coal be produced in commercial quantities from new and readjusted leases. In order to implement this provision and, at the same time, to accommodate regional diversity in meeting the requirement, MMS believes that production of 1 percent of the recoverable coal reserves by the end of 10 years and 1 percent every year thereafter on a 3-year average does not impose an onerous burden on an operator/lessee. These comments were rejected.

Several comments stated that the applicability of the definition of commercial quantities, as that term is used in Section 2(a)(2)(A) of MLA, should be clarified. The DOI has determined that the use of commercial quantities in Section 2(a)(2)(A) and Section 7(b) of MLA should be synonymous. Neither DOI's analysis nor any comment has presented any reason why the two uses of the same term should have different definitions.

Two comments stated that the definition of commercial quantities does not state a *timeframe* by which commercial quantities must be produced. The MMS agrees. Commercial quantities is the *amount* of recoverable coal reserves that must be produced. Section 7(a) of MLA states that any Federal lease not producing (implying continuing production) this amount at the end of 10 years from lease issuance or readjustment, whichever occurs first after August 4, 1976, shall be terminated.

Several comments supported the change of the commercial quantities requirement for Federal leases issued prior to August 4, 1976, from 2½ percent to 1 percent. Several comments stated that the commercial quantities requirement for Federal leases issued prior to *and* after August 4, 1976, should be identical and be 1 percent. Several comments stated that the commercial quantities requirement for Federal leases issued prior to August 4, 1976, should remain at production of 2½ percent of the recoverable coal reserves. The DOI believes that reducing the requirement from 2½ percent to 1 percent will allow for more orderly, environmentally sound development of Federal coal. The DOI believes that production of 1 percent as implemented in the 1979 rules for leases issued after August 4, 1976, indicates a significant undertaking on the part of an operator/lessee that is accomplished only after significant financial expenditure for the development of the property. The DOI believes that this 1 percent standard is appropriate for the diligence requirements for all leases, regardless of issue date.

Many comments supported the proposed application of the 10-year diligent development period requirement to Federal leases issued prior to August 4, 1976, only upon the first lease readjustment after August 4, 1976. Many comments were opposed to this concept. One comment stated that the 10-year period for diligent development for Federal leases issued prior to August 4, 1976, should begin on the effective date of this final rulemaking. One comment stated that the 10-year period for Federal leases issued prior to August 4, 1976, should begin on a date determined from the Federal lease issuance, disregarding the first lease readjustment date after August 4, 1976. One comment stated that diligence requirements cannot be applied to Federal leases issued prior to August 4, 1976, even upon the first lease readjustment after August 4, 1976. The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal lease term (see Solicitor's Opinion M–36939 dated September 17, 1981). It should be noted that if an operator/lessee elects to be subject to the rules of this Part prior to Federal lease readjustment, he may apply to the District Mining Supervisor in accordance with 30 CFR 211.20 and 30 CFR 211.24.

Several comments opposed the 10-year deadline for achievement of diligent development because the deadline is set without consideration of market conditions or amount of recoverable coal reserves. This deadline is based upon the explicit requirements of MLA which, in Section 7(a), specifies that any Federal lease "not producing in commercial quantities at the end of ten years shall be terminated." By defining "diligent development" in terms of "commercial quantities," DOI thus allows operators/lessees the maximum flexibility to tailor the timing of the operations while still complying with the statutory mandate. Another alternative considered by DOI to implement this statutory requirement was to establish uniform, nationwide milestones for every operation to meet in ensuring that an operation would be producing commercial quantities at the end of 10 years. However, DOI believes that the methods for development of operations should be left to the individual operators/lessees under an approved permit and should not be mandated by DOI. For this reason, DOI decided that the 10-year requirement for producing commercial quantities was equated with the definition of diligent development, leaving the method for achieving this amount of production to the individual operators/lessees. It should be noted that in the second sentence of Section 7(a) of MLA, the term "producing" implies a continuing obligation; therefore, this final rulemaking defines the statutory production requirement of "continued operation" as 1 percent every year thereafter based on a 3-year average. This will allow the operator/lessee additional flexibility in meeting this production requirement.

One comment stated that the 10-year mandate was too long and not in the interest of environmental protection. The MLA allows an operator/lessee 3 years within which to submit a resource recovery and protection plan. Allowing an additional 2 to 3 years for compliance with NEPA and SMCRA, and an additional 2 to 3 years for development of an operation only leaves 1 to 3 years for the operation to have produced an amount of 1 percent of the recoverable coal reserves and be capable of maintaining production at a rate of 1 percent of the recoverable coal reserves every continued operation year thereafter. Thus, DOI believes that the 10-year period is realistic. This comment was rejected.

The following hypothetical examples illustrate the concept of the diligent development period for LMU's.

(1) For an LMU containing a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval:

Date	Event
Apr. 15, 1974	Federal lease "A" issued.
Mar. 30, 1978	Federal lease "B" issued.
May 30, 1980	Federal lease "C" issued.
Apr. 1, 1983	LMU approved containing Federal leases "A," "B," and "C."
Do.	Diligent development period begins.
Apr. 1, 1993	Latest date that diligent development period can end.

(2) For all other LMU's, i.e., those which do not contain a unreadjusted Federal lease issued prior to August 4, 1976:

Date	Event
Mar. 20, 1957	Federal lease "A" issued.
Mar. 20, 1977	Federal lease "A" readjusted.
May 27, 1980	Federal lease "B" issued.
Apr. 1, 1983	LMU approved containing Federal leases "A" and "B."
May 27, 1980	Diligent development period begins.
May 27, 1990	Latest date that diligent development period can end.

NOTE.—The two key dates in this second example are the readjustment date of Federal lease "A" (3–20–1977) and the issuance date of Federal lease "B" (5–27–1980). The most recent of these dates, hence the date upon which the diligent development period begins, is the issuance date of Federal lease "B" (5–27–1980).

Several comments stated that the diligent development requirement should be modified to provide reasonable flexibility because of the lengthy development time required for *in situ* operations. The DOI is currently reviewing the mineral leasing laws (see 46 FR 40588, August 1, 1981) to determine their applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. These comments will be considered in that rulemaking effort.

One comment suggested that the termination of the diligent development period upon achievement of production of coal in commercial quantities should coincide with commencement of the continued operation year, which begins the first royalty reporting period after achievement of production in commercial quantities. The 30 CFR 211.2(a)(14) has been revised to allow for this continuity.

30 CFR 211.2(a)(6) Contiguous.

Several comments supported the change to the definition of contiguous. One comment stated that the definition is unduly restrictive because an LMU could consist of noncontiguous segments. However, the LMU definition expressly states that "all lands in an LMU shall * * * be contiguous." The requirement of contiguity is mandated by MLA. Therefore, this comment was rejected.

Two comments stated that the definition should be redefined to replace the one-point-in-common requirement with the concepts of "close proximity," "common facilities," or "nearby." The MMS has determined that the primary definition of "contiguous," i.e., at least one point in common, most accurately reflects the congressional intent of Section 2(d)(1) of MLA. This definition will, therefore, be used in implementing the LMU concept. These comments were rejected.

30 CFR 211.2(a)(12) Development.

One comment requested that "after approval of a permit application package" be deleted from the definition of "development." However, Section 506 of SMCRA, 30 U.S.C. 1256, states that "no person shall engage in * * * any surface coal mining operations unless such person has *first* obtained a permit * * *. (emphasis added) Therefore, this comment was rejected.

30 CFR 211.2(a)(17) Exploration.

One comment requested that "taking of bulk samples" should be included in the definition of exploration. The MMS believes that the definition, in conjuction with 30 CFR 211.10(a)(3)(vi), encompasses this concern. Thus, this comment was rejected.

One comment requested that "soil samples [taken] for reclamation purposes" should be included in the definition of exploration. The MMS agrees and 30 CFR 211.2(a)(17) has been revised accordingly.

30 CFR 211.2(a)(18) Exploration Plan.

One comment requested that the definition of exploration plan be restricted to "leased Federal lands." Since MMS is responsible for *all* exploration for Federal coal prior to commencement of mining operations within an approved permit area, this comment was rejected. Prelease exploration for Federal coal must comply with the performance standards at 30 CFR 211.40(a) *and* the provisions at 43 CFR Part 3410. In addition, all exploration plans for Federal coal must comply with the requirements at 30 CFR 211.10(a).

Two comments requested modification of the definition of exploration plan to include "applicable State laws." The MMS believes that 30 CFR 211.10(a)(1)(vii) and 30 CFR 211.40(a)(3) encompass this concern. Thus, the comment was rejected.

30 CFR 211.2(a)(20) Gross Value.

Many comments requested the exclusion of reimbursed and nonreimbursed Federal royalties and Federal fees when determining the gross value, for Federal royalty assessment, of the Federal recoverable coal produced. Two comments stated that the proposed method for determining gross value not only artificially inflates the price of coal but that those making the comments would pass such costs on to the consumers, whether the costs were direct or indirect. Several comments also requested exclusion of reimbursed and nonreimbursed State and local royalties and fees. The Secretary has concluded that the current method for computing royalties will be retained.

One comment suggested that the unit sale or contract price for synthetic fuel production from coal should be made at the well head (for *in situ* coal gasification). A notice published in the **Federal Register** on August 10, 1981, reguested public comments regarding the royalty base for *in situ* coal gasification. From comments received, the royalty valuation procedures have been narrowed to two methods, which will soon be published in the **Federal Register** for public comment. No determination has been made on royalty calculation for *in situ* coal gasification.

One comment suggested that if DOI investigated current leasing that not only should the definition remain the same, but that all "surface-mined coal [should] be at a 16 percent or greater royalty rate." The current Federal Coal Management Program has investigated coal leasing in the private sector and has not found a royalty rate above the 12½ percent minimum statutory rate for surface-mined Federal coal to be warranted.

One comment requested that gross value should be established at "approximately the same place in the production stream for all coal properties." Another comment requested that this point be the "point of severance after primary crushing." The MMS believes that the language contained at 30 CFR 211.63 (f) and (h) addresses this concern; i.e. "gross value at the point of sale, [which is] normally the mine."

One comment requested that the definition be left as proposed because historically, "[t]he only real indication of the market value of coal is the unit sale or contract price."

One comment requested that gross value be determined on an annual basis versus a spot-price basis. The present definition of gross value does not use a spot-price basis in its language. In actual practice, gross value is the weighted average selling price for the reporting period. Royalty based on an annual gross value calculation would represent the loss of use of funds to the royalty owner for the period of 1 year. Conversely, the operator/lessee would have the use of the royalty owner's money for the period of 1 year. This

comment was rejected as being contrary to the policy of DOI.

30 CFR 211.2(a)(22) Logical Mining Unit (LMU).

One comment stated that all Federal leases should automatically be designated as LMU's because this would give operators/lessees incentives to produce coal. The designation of LMU's under Section 2(d) of MLA is discretionary. It is not DOI policy to automatically designate any lease as an LMU. The MMS believes that the diligent development and continued operation provisions already provide the incentives to produce coal.

Supplemental resource recovery and protection plan requirements and conditions for approval are addressed in the preamble discussion of comments received on 30 CFR 211.80.

Several comments suggested that BLM and MMS definitions for LMU's should be consistent. The definitions have been made consistent in this final rulemaking.

Several comments addressed the 40-year mine-out requirement beginning with the date that coal is first produced after LMU approval. Two comments favored and two comments opposed this interpretation of the statute. Based on a review of the legislative history, DOI has determined that this implementation of the 40-year mine-out period is correct. Therefore, the requirement has not been changed.

Several comments suggested additional wording for the LMU definition to clarify DOI's position that Federal leases are not automatically LMU's. The designation of LMU's is discretionary under Section 2(d) of MLA. With these final rules, it is *not* DOI policy automatically to designate *any* Federal lease to be an LMU. The former rules designating each lease an LMU are repealed with this final rulemaking and BLM's final rulemaking for 43 CFR 3400. Therefore, these comments were rejected.

Several comments favored the proposed removal of the restriction that all lands included in the LMU be underlain by coal. This removal more correctly reflects the provisions of MLA and has been retained in this final rulemaking.

One comment suggested that lands underlain by Federal coal could be set aside for ancillary facilities, thus rendering some Federal coal unminable. The addition of these words to the definition is not appropriate. Such provisions, if proposed in a resource recovery and protection plan submittal, will be reviewed and a decision made by the District Mining Supervisor prior to approval of the permit application package.

Several comments requested clarification of any penalties levied at the end of 40 years if production were not completed. The rules of this Part provide that an LMU shall be terminated at the end of the 40-year statutory production period. Upon termination of the LMU, each Federal coal lease contained in the LMU shall revert to its origainal Federal lease diligence requirements, including the governing regulations related to diligent development and continued operation.

Several comments stated that the cost of environmental compliance (SMCRA and NEPA) and the requirement for meeting MER should be part of the LMU definition. Such wording is not consistent with the statutory requirement of MLA. Environmental costs are an integral part of the MER determination and is a factor considered in any resource recovery and protection plan approval. This concern is addressed in the preamble discussion of comments received on 30 CFR 211.11(a)(2) for both Federal leases and LMU's.

Several comments stated that the term "contiguous" and the 25,000-acre limitation are unduly restrictive. These restrictions are required by MLA, which cannot be amended by rulemaking. Therefore, these comments were rejected. However, the 25,000-acre limitation is not part of the LMU definition and has been codified at 30 CFR 211.80(f)(6).

Two comments supported the inclusion of the concept that a single operation may include a series of excavations. This concept remains unchanged in this final rulemaking. However, it is not part of the LMU definition and has been codified at 30 CFR 211.80(f)(2).

Two comments requested clarification of the contiguous concept as related to unsuitable lands and mixed ownership (i.e., Federal and non-Federal lands included in an LMU). Contiguous is defined as having at least one point in common including cornering tracts. Intervening physical or legal separations do not destroy the concept of contiguity as long as legal subdivisions have at least one point in common. Therefore, neither mixed ownerships nor lands declared unsuitable after LMU formation necessarily destroy the concept of contiguity.

One comment questioned the procedure for modifying LMU boundaries and LMU recoverable coal reserves. Such procedures are not part of the LMU definition. These procedures are addressed at 30 CFR 211.11(a)(3) and 30 CFR 211.80(a) and (g). The LMU acreage and boundaries may be modified as long as the statutory maximum of 25,000 acres is not exceeded.

One comment questioned whether the 40-year mine-out period would be altered upon LMU modifications. Any revised resource recovery and protection plan shall provide for the mining of all LMU recoverable coal reserves not later than the end of the original 40-year period, in accordance with MLA (see 30 CFR 211.80(g)(2) through (4)).

Two comments questioned the authority and criteria under which MMS would require any operator/lessee to form an LMU. While MLA authorizes DOI to order the establishment of an LMU involving leases issued after August 4, 1976, it is not DOI policy to exercise this option. Criteria for requiring LMU formation will be established on a case-by-case basis.

One comment requested clarification that an LMU which includes non-Federal recoverable coal reserves does not mandate Federal jurisdiction over mining of non-Federal recoverable coal reserves. Federal jurisdiction under MLA is limited to the Federal recoverable coal reserves contained in the LMU; whether Federal permitting under SMCRA remains applicable is a matter treated in OSM rules and State programs under SMCRA and those rules. Non-Federal recoverable coal reserves are only considered for the diligence requirements of the LMU and the determination of MER for the Federal LMU recoverable coal reserves. The 30 CFR 211.80(e)(5) has been revised to reflect this intent.

30 CFR 211.2(a)(23) and (36) Logical Mining Unit (LMU) Recoverable Coal Reserves and Recoverable Coal Reserves.

Two comments stated that the term "reserves" is inconsistent with industry practice. The MMS believes that the redefinition of the term "coal reserves" as "recoverable coal reserves" clarifies the intent of the definition.

Several comments stated that LMU recoverable coal reserves *must be* adjusted upon receipt of new information. One comment stated that reserves should only be adjusted upon request of an operator/lessee. Two comments stated that reserve estimates, once established, should not be revised.

If reserve estimates are revised upward, MER may be adjusted accordingly in order to ensure fair return to the Federal Government and the public. By the same logic, an operator/

lessee should not be penalized if, during operations, fewer recoverable coal reserves are discovered than originally estimated. In order to ensure that an operation is in compliance with MLA, the District Mining Supervisor must be able to adjust the recoverable coal reserves figures as new information becomes available. The 30 CFR 211.11(a)(3) has been inserted and 30 CFR 211.80(e)(5) has been modified to reflect this requirement.

One comment stated that reserves should be adjusted based on the periodic submittals of data required under General Mining Order Number 1 (GMO #1). The GMO #1 is currently under review for revision or replacement. If GMO #1 is continued, it will be utilized as one source of new information in determining whether recoverable coal reserves or LMU recoverable coal reserves should be adjusted.

Two comments requested that environmental constraints be considered in the determination of recoverable coal reserves. This suggestion was rejected because environmental constraints are encompassed in the wording of "other areas where mining is not permissible."

Several comments requested adding words concerning mining or economic constraints. These comments were rejected because such constraints are encompassed in the wording of "coal that can be *mined commerically* under *existing technology and economics.*" (emphasis added)

One comment concerned overlapping definitions. The BLM and MMS have resolved the inconsistencies.

30 CFR 211.2(a)(24) Maximum Economic Recovery (MER).

Many comments were received concerning the definitions of MER. These comments fall into three broad categories: favoring the proposed definition with modification; favoring the preamble definition with modification; and, favoring retention of the existing (1981 43 CFR 3400) definition. In the first two categories, suggested modifications addressed not the definition but the actual method of determination of MER. Therefore, the suggestions are addressed in the preamble discussions of comments received on 30 CFR 211.11(a)(2). Factors contained in both the proposed and preamble definition that related to the method of MER determination have been combined and revised, as appropriate, based on comments received.

One comment states that the definition of MER "violates Section 3(C) [sic]" of FCLAA. The MMS believes that this concern is already covered by provisions at 30 CFR 211.10(c)(3)(ii) which require the operator/lessee to submit data on the "methods of mining and/or variation of methods * * *" The District Mining Supervisor has discretionary authority to approve or require modifications, such as alternative methods of mining, to resource recovery and protection plans.

Two comments stated that the proposed definition is inconsistent with both MLA and SMCRA. In addition, one comment stated that the revised definition of MER would result in "high-grading of [sic] 'cream skimming!'" The comment also requested the deletion of the term "or equal to." The MMS believes that the definition is not inconsistent with either MLA or Section 515(b)(1) of SMCRA (30 U.S.C. 1265(b)(1)). The MSS will not force an operator/lessee to operate continuously at the "break even" point of the operation. The MMS is responsible for ensuring conservation of the "coal reserves and other resources." Thus, the definition, used in conjunction with the provisions at 30 CFR 211.11(a)(2), meets the statutory requirements of both MLA and SMCRA.

30 CFR 211.2(a)(26) Mine

One comment suggested that the word "commercial" be inserted before the word "mining" in order to clarify that "extraction of coal for bulk sampling purposes does not constitute mining in the context of this definition * * *" The 30 CFR 211.10(a)(3)(vi) covers bulk sampling as exploration, under the provision that states "a description of the methods to be used to determine those amounts * * *" Thus, this comment was rejected.

30 CFR 211.2(a)(27) Minable Reserve Base.

Several comments requested that coal which is not recoverable due to legal or regulatory constraints (including, but not limited to, coal in land classified unsuitable for coal mining operations) should be excluded from the definition. The MMS agrees and the definition has been changed accordingly. Also, since comparison of the recoverable coal reserves with the minable reserve base is important in determining the efficiency of a proposed operation and to determine that a proposed operation will achieve MER, the definition of recoverable coal reserves has been redefined in terms of the minable reserve base. By the samr reasonsing, minable reserve base has been redefined in terms of the coal reserve base.

30 CFR 211.2(a)(30) Notice of Availability.

Two comments suggested that "adequate newspaper publication is required" for notices of availability of LMU applications and decisions on LMU's. The MMS believes that the definition is an inappropriate place for a publication requirement. However, MMS agrees with the comment. Publication in newspapers was proposed at 30 CFR 211.5 (b)(1) and (2) and has been retained in the final rulemaking.

One comment requested public participation on exploration plans and resource recovery and protection plans. Public participation procedures for postlease exploration plans are provided by the posting of the exploration plans at the office of the District Mining Supervisor. See also the discussion of comments received on 30 CFR 211.5(b). Public participation in prelease exploration is the responsibility of BLM. Public participation in the approval of permit application packages, which contain the resource recovery and protection plan required by MLA and the permit application required by SMCRA, is the responsibility of OSM or the State regulatory authority.

30 CFR 211.2(a)(33) Permanent Abandonment of Mining Operations.

One comment questioned whether "permanent abandonment of mining operations" applies only to MLA requirements, or also to reclamation requirements of SMCRA. The intent of the definition is to satisfy only MLA requirements. The OSM or State regulatory authority is responsible for completion and permanent abandonment of reclamation operations under SMCRA.

30 CFR 211.2(a)(38) Resource Recovery and Protection Plan.

Two comments stated that the purpose of the resource recovery and protection plan was to address only MLA requirements and was to be submitted within the 3-year period required by MLA. The comments further stated that submittal of a resource recovery and protection plan was not sufficient to allow mining. The MMS agrees with these comments as discussed at 30 CFR 211.10(b) in the proposed rulemaking. That discussion has been retained in this final rulemaking.

One comment requested that the resource recovery and protection plan be "a detailed plan" to satisfy MLA requirements. The MMS believes that the resource recovery and protection

plan fully complies with the requirements of MLA. It is more reasonable to allow a company to submit the detailed information at the time it submits a permit application to the regulatory authority. Therefore, this comment was rejected.

One comment stated that the resource recovery and protection plan should not be for the life-of-the-mine but for the entire Federal lease or LMU. The MMS believes that this comment reflects confusion between MMS responsibilities under MLA and regulatory authority responsibilities under SMCRA. The MMS use of "life-of-the-mine" in these rules pertains to the life-of-the-mine on Federal coal leases and, for LMU's, non-Federal coal only if that non-Federal coal is used by the operator/lessee to satisfy MLA requirements for the Federal coal lease(s) contained in the LMU. The MMS requires the resource recovery and protection plan to contain the total Federal lease or LMU recoverable coal reserves estimates so that the District Mining Supervisor can determine that MER of the Federal coal will be achieved. Therefore, this comment was rejected.

30 CFR 211.2(a)(41) Subsidence.

Two comments stated that the definition of subsidence should include offsite impacts caused by subsidence. The MMS disagrees. Although offsite impacts may occur as a result of subsidence, they are not part of the definition of subsidence. Offsite impacts resulting from subsidence fall under the purview of the regulatory authority, not MMS. The proposed 30 CFR 211.40(c)(2) entitled "Subsidence" inadvertently omitted a cross-reference to 30 CFR 784.20. This omission has been corrected in this final rulemaking.

30 CFR 211.2(c)

One comment stated that cross-referencing definitions was appropriate but that some of the cross-referenced definitions were being revised. The MMS is aware that the cross-referenced definitions are being revised; however, the cross-referenced definitions are those that deal with 30 CFR Chapter VII requirements, not those at 30 CFR Part 211. Therefore, by cross-referencing the definitions, as they are changed by OSM, the change will be made simultaneously in their use at 30 CFR Part 211.

One comment suggested that the definition of "approved State program" be cross-referenced to 30 CFR Chapter VII. Since neither "approved State program" nor "State program" are specifically defined at 30 CFR Chapter VII, this comment was rejected.

One comment suggested that the definition of "Indian lands" be cross-referenced to 30 CFR Chapter VII. The MMS agrees and the definition of "Indian lands" has been cross-referenced to 30 CFR Chapter VII.

30 CFR 211.3 General Responsibilities.

One comment stated that the District Mining Supervisors have "too much discretionary authority" and that there are "no apparent checks and balances * * * [to] * * * prevent interference by a District Mining Supervisor in the economic viability of a mine." The MMS disagrees. The District Mining Supervisor is the most knowledgeable professional familiar with the operations under his supervision. Regarding checks and balances, 30 CFR 211.3(b) already addresses the supervisory authority and "line of command." This comment was rejected.

One comment stated that this section should be clarified regarding the responisbilities of MMS, BLM, and OSM. These responsibilities are stated at 30 CFR 211.1(c) and no further clarification is needed. In general, the 30 CFR Part 211 rules are a statement of the responsibilities of MMS, 30 CFR Chapter VII is a statement of the responsibilities of OSM, and 43 CFR Part 3400 is a statement of the responsibilities of BLM.

30 CFR 211.3 (c) and (d)

Several comments stated that these two paragraphs were overly broad in the authority to "determine whether there is compliance with all provisions of applicable laws, rules, and orders * * *" The MMS interprets the term "applicable" in the above sentence to mean those laws, rules, and orders for which MMS is responsible pursuant to MLA. It should be noted that the "District Mining Supervisor shall enforce requirements of SMCRA *only if* he finds a violation, condition, or practice regarding emergency situations for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12." (emphasis added) The provisions at 30 CFR 843.11 state in part that "[a]n authorized representative of the Secretary shall immediately order a cessation of * * * operations or of the relevant portion thereof, if he finds, on the basis of *any* Federal inspection, *any* condition or practice, or *any* violation of the Act [SMCRA], * * * *any* applicable program, or *any* condition of * * * [a] permit imposed under *any* such program, the Act [SCMRA], or this chapter (30 CFR Chapter VII), which" creates imminent danger to the health and safety of the public or "is causing or *can reasonably be expected to* cause significant, imminent environmental harm to land, air, or water resources." (emphasis added) Thus, in *emergency* situations discovered during normal inspection of operations by MMS personnel, the inspecting person is authorized to enforce laws, rules, and orders beyond those for which MMS is responsible pursuant to MLA. Thus, these comments were rejected.

30 CFR 211.3(c)(1)

One comment stated that "the Department illegally proposes giving [MMS] sole regulatory jurisdiction over coal exploration activities on Federal leases." The comment further asserts that "Section 201(b) [of SMCRA] bars agencies with coal development responsibilities, like [MMS], from exercising any functions under [SMCRA]." Also, the comment states that "[u]nder Section 523 of SMCRA, * * * OSM, is the regulatory authority on Federal lands unless there is a cooperative agreement," in which case "OSM shares regulatory jurisdiction with the state regulatory authority." These final rules implement MLA, not SMCRA. The OSM has no authority to implement MLA requirements and thus neither OSM nor the State regulatory authority have authority for exploration for *Federal* coal until mining operations have commenced within an approved permit area. Until this point, BLM and MMS share responsibility for exploration. This comment was rejected.

One comment stated that "state activities must be constrained so as not to intrude * * * with the sovereignty and roles of Tribal governments" or Bureau of Indian Affairs (BIA) and tribes. The MMS agrees and will continue to work closely with BIA in effecting the Indian trust responsibilities of DOI.

30 CFR 211.3(c)(2)

One comment suggested that the final rules should be clarified to state that the Secretary has the approval authority only with respect to the resource recovery and protection plan, but that "ultimate approval for operations on federal [sic] lands rests with the State regulatory authority where an approved cooperative agreement is in existence." Section 523(c) of SMCRA states that "[n]othing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands * * * or to regulate other activities taking place on Federal lands." The State regulatory authority under a cooperative agreement has the responsibility for ensuring that the

permit application submitted pursuant to SMCRA meets the requirements of the approved State program and the Permanent Federal Lands Program rules at 30 CFR Part 740. The ultimate responsibility for ensuring that MLA requirements are met rests with the Secretary and *cannot* be delegated to a State under a cooperative agreement. Therefore, this comment was rejected.

One comment suggested that the Secretary develop a "threshold warning system" enabling the Secretary to know in advance when an operator/lessee will not meet the statutory 40-year mine-out deadline. The comment also suggested that this warning system "coupled with tough penalties" would provide "sufficient incentives to assure that the 40-year deadline is met * * *" The MMS agrees with the concept of a threshold warning system. The provisions at 30 CFR 211.3(c)(4) require inspections of all operations to determine whether there is compliance with all provisions of "applicable laws, rules, and orders, all terms and conditions of Federal leases * * * and all requirements of approved * * * resource recovery and protection plans." These inspections must be performed "as frequently as necessary, *but at least quarterly.*" (emphasis added) The MMS believes that such inspections will provide the Secretary with a "threshold warning system." With respect to penalties, 30 CFR 211.21(b) states that any "Federal coal lease included in an LMU which has been terminated * * * shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease * * * if the Federal lease had not been included in the LMU." If the conditions of diligent development and continued operation are not met on a Federal lease-by-lease basis, the Secretary "may cancel any Federal coal lease" in accordance with 30 CFR 211.21. Thus, such Federal leases would revert "to the Department for reissuance" as the comment requested. The MMS agrees with the entire comment and believes it is adequately addressed in this final rulemaking.

30 CFR 211.3(c)(8)

Several comments requested that the provision at 30 CFR 211.3(c)(7) concerning the regulatory authority be repeated at 30 CFR 211.3(c)(8). The MMS agrees and the addition has been made in this final rulemaking. It should be noted that the final term "and the rules of this Part" has been deleted at both 30 CFR 211.3(c) (7) and (8) because the regulatory authority cannot enforce the provisions at 30 CFR 211.

One comment stated that the concept of abandonment or relinquishment of a Federal lease or license should encompass the possibility of relinquishing only portions of Federal leases or licenses. The MMS agrees. Since 43 CFR 3452.1–1 for Federal leases, and 43 CFR 3410.3–1(d) for Federal licenses, already incorporate this concept, appropriate cross-references to these provisions have been inserted at 30 CFR 211.3(c)(8).

30 CFR 211.3(c)(11)

One comment asked what authority MMS had to enforce this provision. This concern has been previously addressed in the preamble discussion of comments received on 30 CFR 211.3(c) (4) and (5). This comment was rejected.

One comment questioned whether the Federal Government can inspect and enforce State law requirements. It is the intention of MMS to enforce only Federal requirements, and the language of this paragraph has been revised to reflect this intent.

30 CFR 211.3(c)(12)

One comment questioned issuance of oral orders and when they would become effective. The 30 CFR 211.72(c) reflects the concern stated in the comment that such oral orders "probably would be of an emergency nature." The paragraph, in part, states that under emergency conditions, "the District Mining Supervisor shall order the *immediate cessation* of such activities without prior notice of noncompliance." (emphasis added) The provisions at 30 CFR 211.3(c)(12) require prompt confirmation in writing of such oral orders. Thus, the provisions at 30 CFR 211.73 concerning appeals would be effective immediately. The MMS believes these provisions address the concerns expressed in the comment.

30 CFR 211.3(c)(13)

Several comments expressed concern regarding duplicate bonding requirements by States and MMS concerning MLA responsibilities. Lease bonds are required in order to ensure that the dollar obligations of the operator/lessee are adequately covered. Reclamation bonds under SMCRA cover the reclamation of operations upon completion of mining operations. The reclamation bonds are a requirement implemented by the regulatory authority, not MMS. Therefore, these comments were rejected.

30 CFR 211.4 General Obligations of the Operator/Lessee.

30 CFR 211.4(c) and (d)

Several comments requested a definition of "other resources" that must be conserved under Section 2(d)(1) of MLA. Other resources include, but are not limited to, leasable minerals under MLA and other subsurface resources. Conservation of "other resources" will be addressed on a case-by-case basis by appropriate State and Federal Agencies. Such consultations are procedural, not regulatory. Therefore, these comments were rejected.

One comment stated that it was "difficult to ascertain what the phrase 'related to the resource recovery and protection plan' modifies." The intent of the paragraph was to ensure that the District Mining Supervisor would be advised if severe injury or loss of life would affect MLA requirements of the resource recovery and protection plan. The wording has been clarified to reflect this intent. The comment further stated that MMS "does not possess the authority over mine safety implied * * *" The MMS agrees and believes that the revisions to this paragraph in conjunction with 30 CFR 211.1(c)(2) clarify this situation.

30 CFR 211.5 Procedures and Public Participation.

One comment requested that a procedure be adopted "whereby logical mining units may be terminated while retaining one or more of the underlying federal [sic] leases previously subject to the logical mining unit." The provisions at 30 CFR 211.21(a) allow for such termination of LMU's and the provisions at 30 CFR 211.21(b) allow for the retention of the Federal leases.

One comment stated that the public participation procedures at 30 CFR 211.5 should be expanded to address termination or cancellation of an LMU. Under Section 7 of MLA, terminations are mandatory. Termination or cancellation of an LMU is an administrative procedure (see discussion of comments received on 30 CFR 211.5(b) and 30 CFR 211.21(c)). This comment was rejected.

30 CFR 211.5(b)

Two comments stated that publication of a notice in a newspaper of general circulation "is made discretionary with the Supervisor." The MMS disagrees. The final sentence at 30 CFR 211.5(b)(1) and the first sentence at 30 CFR 211.5(b)(2) require the notice *to be submitted* "to a local newspaper of general circulation" by the District Mining Supervisor. The comment was rejected.

One comment stated that a notice of availability of a proposed LMU or modification should *not* be provided to "surface owners of areas to be underground mined and which would not be disturbed by the placement of surface support facilities." Depending on the contemplated underground mining method, subsidence could result that could adversely affect the surface owner's use of the land. Based on a continuing DOI commitment to public participation, it is logical that the surface owner be informed of any action taken subsequent to Federal lease issuance. This comment was rejected.

One comment "object[ed] strenuously to the elimination of all public participation from the mine plan [sic] and exploration plan approval process." With respect to public participation in the permit application package review process, the provisions at 30 CFR Chapter VII apply to the permit application package, which contains the MLA resource recovery and protection plan and the SMCRA permit application. Public participation in the exploration plan approval process has historically been covered by the "written findings" at 30 CFR 211.5(a) which provides that all major decisions and determinations, including approval of an exploration plan, shall be in writing and "shall be available for public inspection * * * during normal business hours at the appropriate office." The MMS has not been presented with any arguments justifying a change in the current procedure, nor is MMS aware of any instances where public participation was not served by the current procedures. This comment was rejected.

30 CFR 211.6 Confidentiality.

Two comments requested that proprietary data be provided to States. Several comments were opposed to this concept. Several comments suggested that proprietary data should not be provided to States unless the States had enacted laws as strict as the restrictions imposed by the Freedom of Information Act (FOIA) (5 U.S.C. 552). Two comments stated that the operators/lessees should be notified prior to release of proprietary data. The 30 CFR 211.6(a)(2) provisions state that proprietary data shall not be made available to the public "without the consent of the operator/lessee."

Proprietary data *cannot* be disseminated publicly because release of such data would compromise the competitiveness of the coal industry. The proprietary data provided to MMS are used by MMS to enforce MLA requirements, not those of SMCRA. It should be noted that Section 507(b)(17) of SMCRA provides for confidentiality of analysis of chemical and physical properties of coal, except information regarding mineral or elemental content which is potentially toxic in the environment. Also, it should be noted that Section 512(b) of SMCRA mandates confidentiality of trade secrets or commerical or financial information which relate to the competitive rights of the person or entity to explore a described area. With regard to MLA, Section 2(b)(3) requires the Secretary to maintain the confidentiality of all data obtained under an exploration license until after Federal lease issuance or until a determination by the Secretary that releasing the data to the public would not damage the competitive position of the licensee. However, no copies of such proprietary data can be released to the States. Therefore, 30 CFR 211.6 has not been revised. Two comments stated that FOIA (5 U.S.C. 552(b)) does not cover coal. The comments stated that confidentiality of geologic and geophysical data and maps pertains only to oil wells. The FOIA specifies "wells" and does not tie them to a specific mineral commodity. It is DOI's position that "wells" includes exploration holes for leasable minerals. Thus, these comments were rejected.

Several comments stated that 30 CFR 211.6(a)(2) is contrary to SMCRA provisions at Sections 507(b) and 508(a)(12). The 30 CFR 211.6 provisions implement MLA requirements and do not affect data submitted to the regulatory authority in compliance with SMCRA. Thus, these comments were rejected.

One comment stated that requests for economic and financial data should only be related to royalty calculations and should be held confidential. Profitability is a function of coal conservation and mining techniques and, in order to ensure the conservation of the coal, financial and economic data may be required. The 30 CFR 211.6 ensures the confidentiality of any such submitted material. This comment was rejected.

One comment stated that trade secrets and financial information should be kept confidential even after Federal lease termination. The 30 CFR 211.6(a)(3) only provides for the release of geologic and geophysical data and maps. Trade secrets and financial information can only be released to the public after *consent* of the operator/lessee in accordance with 30 CFR 211.6(a)(2). The 30 CFR 211.6(a) (2) and (3) have not been revised, since they adequately address the concerns stated in the comment.

One comment stated that proprietary data should not be released upon termination of a Federal lease when the termination is being appealed. As long as a termination is under appeal, DOI does not consider a Federal lease to be terminated. Thus, the proprietary data are protected by the provisions at 30 CFR 211.6(a)(2).

Two comments objected to the release of recoverable coal reserves estimates at the time of Federal lease issuance or Federal lease readjustment even if such release was required by a Federal lease term. The provisions at 30 CFR 211.6(a)(4) recognize that a Federal coal lease is a binding legal document. Therefore, if the Federal lease contains a provision requiring data release, the condition is binding on the operator/lessee. If a Federal lease does not contain such a term, release of data at the time of Federal lease issuance is at the Secretary's discretion pursuant to Section 2(b)(3) of MLA.

One comment stated that 30 CFR 211.6(a)(3) does not distinguish between data from exploration and from resource recovery and protection plans. The provisions at 30 CFR 211.6(b) in concert with 30 CFR 211.6(a) adequately cover both data obtained from licensees and from operators/lessees (see definition of "operator/lessee" at 30 CFR 211.2(a)(32)).

Several comments requested that MMS not provide proprietary data to other Federal Agencies unless they had controls for the proprietary data as strict as those developed by MMS. One comment also suggested that MMS develop procedures for the handling of proprietary data by DOI Bureaus and other Federal Agencies. Within DOI, data is released only to those Bureaus that agree to become a "secondary office of control." Approved secondary offices of control must comply with MMS requirements for the handling and dissemination of proprietary data. Secondary offices of control are strictly prohibited from disseminating data maintained as proprietary by MMS. The secondary office of control requirements also apply to Federal Agencies other than DOI Bureaus. Prior to the release of proprietary data to any Federal Agency or Bureau, that Federal Agency or Bureau must demonstrate a need for the proprietary data. Thus, MMS standards are adhered to prior to release of proprietary data to any other Federal entity.

30 CFR 211.10 Exploration and Resource Recovery and Protection Plans.

30 CFR 211.10(a)

One comment stated that it is "clear on its ace [sic]" that authority under Section 523 of SMCRA could only be "exercised by the [MMS] to the degree necessary to * * * perform * * * duties under" MLA. The MMS agrees.

Several comments requested MMS to give regulatory control of exploration activities to the States. Two comments requested that State laws should govern exploration where State laws are at least as stringent as Federal standards. One comment stated that MMS supervision of exploration is contrary to the Federal Lands Program pursuant to SMCRA. Section 2(b)(3) of MLA prohibits delegation by the Secretary of responsibilities for prelease exploration for Federal coal. Release of data obtained from such exploration is also prohibited. Sections 512(e) and 701(28) of SMCRA do not include exploration in the term "surface coal mining and reclamation operations." Currently, MMS has approval authority for exploration for all postlease Federal coal outside a permit area, and inside a permit area prior to commencement of mining operations. The suggestion that the States be given responsibilities for postlease exploration for Federal coal under State-specific MMS/State Memoranda of Understanding or MMS/State Cooperative Agreements may be a viable alternative. The MMS is considering such action subsequent to this final rulemaking.

One comment stated that MMS should "delete references to the OSM regulations on coal exploration (30 CFR Part 815) and to state programs when promulgating its final regulations on coal exploration on Federal lands." This has also been of great concern to individual coal States. The States have stated that wherever the 30 CFR Part 211 rules cross-reference *applicable* provisions at 30 CFR 815.15 and approved State programs, MMS is attempting to compromise authorities given to the State regulatory authority under either approved State programs or OSM/State Cooperative Agreements. The performance standards at 30 CFR 815.15 are "applicable to coal exploration which substantially disturbs land surface." The MLA, however, specifically prohibits the taking of any action which might cause "substantial disturbance to the natural land surface" (Section 2(b)(2)), or which might cause "a significant disturbance of the environment" (Section 7(c)) prior to the Secretary's approval of a resource recovery and protection plan. Therefore, some of the provisions at 30 CFR 815.15 cannot be applied to federally leased or licensed lands because of MLA's specific prohibitions. The MMS is responsible for exploration for Federal coal within an approved permit area prior to commencement of mining operations. Upon commencement of mining operations, the regulatory authority assumes this responsibility in accordance with SMCRA. Under MLA, once the MLA resource recovery and protection plan and the SMCRA permit application which constitute part of the permit application package have been approved and the first 5-year permit has been issued, an exploration plan could be submitted for lands within the life-of-the-mine area covered by the resource recovery and protection plan that could result in significant/substantial disturbance. In order to avoid duplication of enforcement of the performance standards at 30 CFR 815.15, 30 CFR 211.10(a)(3)(vii) cross-references the *applicable* performance standards at 30 CFR 815.15. Therefore, this comment was rejected.

One comment stated that an exploration plan should not be required within the area encompassed in the resource recovery and protection plan or within an approved permit area. If the drilling would constitute development drilling immediately preceding mining operations, such drilling would have to take place within the 5-year permit area. However, in line with the preamble discussion immediately above, this comment was rejected for any exploration within the area encompassed by the resource recovery and protection plan, other than that occurring within an approved permit area following commencement of mining operations (i.e., development drilling).

One comment stated that the data requirements for exploration plans are excessive. The MMS has determined that the requirements at 30 CFR 211.10(a) are necessary in order to enforce the provisions of MLA. This comment was rejected.

One comment requested that cross-references to 43 CFR 3410 regarding exploration licenses be deleted. A cross-reference to 43 CFR 3410 was included at 30 CFR 211.10(a) to avoid confusion as to the processing of exploration licenses. This comment was rejected.

30 CFR 211.10(a)(1)

One comment suggested removal of the term "leased or licensed lands." This comment was rejected because MMS responsibilities under MLA concern both federally leased and licensed lands.

One comment suggested that 30 CFR 211.10(a)(1) should cross-reference the 43 CFR 3400.0–5 definition of casual use. Casual use as defined at 30 CFR 211.10(a)(1) more accurately defines the concept required for exploration under MLA. It should be noted that the words "as used in this paragraph" sufficiently reduce the applicability of the term, which is why it is not defined at 30 CFR 211.2(a). This comment was rejected.

Two comments stated that off-road travel and use of explosives should be considered as casual use. This comment was rejected because such activities may result in disturbance to surface resources. Under MLA, MMS in conjunction with the surface management agency is responsible for the protection of surface resources during exploration activities for Federal coal. These comments were rejected.

30 CFR 211.10(a)(2)

One comment requested that relocation or addition of exploration drill holes under an approved exploration plan should not require a modification of the plan. This comment was rejected. Such modifications of plans do not impose an onerous burden on operators/lessees. They must be approved to ensure protection of surface resources.

Several comments suggested that the requirement to submit the name, address, and phone number of the person who will be present during the conducting of the exploration should be deleted. Two of these comments also requested deletion of the requirement of providing the same information for the person responsible for the exploration. These comments were rejected because notices of noncompliance must be delivered to an operator/lessee in a timely manner to prevent undue environmental damage.

30 CFR 211.10(a)(3)(iii)

Two comments requested deletion of "districts, sites, buildings, structures, or objects [listed on or] eligible for inclusion on the National Register of Historic Places." In addition, these two comments requested that the phrase "identified by the State Historic Preservation Officer" be inserted in the provision for known cultural and archeological resources located within the proposed exploration area. The requirement of reporting eligible properties is mandated by an amendment to the National Historic Preservation Act of 1966. The requirement to report known cultural or archeological resources in the plan does not require an operator/lessee to determine eligibility for listing on the National Register. The requirement is intended merely to enable the State

Historic Preservation Officer and/or the District Mining Supervisor to request a determination of eligibility from the Keeper of the National Register, if necessary. Under the National Historic Preservation Act of 1966, as amended, a cultural resource clearance must be obtained from the surface management agency or, where applicable, State Historic Preservation Officer prior to undertaking any such operations on Federal lands. Therefore, these comments were rejected. It should be noted that protection of cultural resources is mandated by SMCRA and implemented by the regulatory authority at the time of permit application package review.

One comment requested deletion of "critical habitats of endangered or threatened species" as not being the responsibility of MMS. This comment was accepted in part. The MMS as the approval agency is responsible for ensuring that the operation is in compliance with certain Federal laws other than MLA. Endangered and threatened species must be protected under the provisions of Section 7 of the Endangered Species Act of 1973, as amended. However, publication of critical habitats of endangered and threatened species could prove detrimental to such species by encouraging increased unauthorized collection or destruction of the species. Therefore, the words "critical habitats of" have been deleted from the information submittal requirements.

30 CFR 211.10(a)(3)(iv)(E)

One comment stated that submission of plans for transfer and modification of exploration drill holes for use as surveillance, monitoring, or water wells is unnecessary and that this is a reclamation issue beyond the scope of an exploration plan. The MMS disagrees that this is a reclamation issue. The stipulation is included specifically to aid the operator/lessee since transfer and modification of exploration drill holes to surveillance, monitoring, or water wells can be used to fulfill SMCRA requirements to gather baseline data for modeling ground-water hydrology for proposed mining operations. Also, the conversion of exploration drill holes to water wells utilized for domestic or livestock purposes transfers liability from the operator/lessee (transferor) to the transferee.

30 CFR 211.10(a)(3)(viii)

One comment requested that the word "known" be inserted in identifying critical habitats of endangered and/or threatened species. For the reasons stated in the preamble discussion of comments received on 30 CFR 211.10(a)(3)(iii), the requirement that critical habitats be contained on the maps submitted has been deleted. This requirement has not been inserted at 30 CFR 211.12 for these same reasons.

30 CFR 211.10(a)(3)(ix)

Two comments requested that the word "enter" be inserted in the second sentence prior to "that land for the purpose of conducting exploration and reclamation." The MMS agrees with this comment and the change has been made to this paragraph.

Two other comments requested that the provision of the second sentence in this paragraph be deleted in its entirety. These comments were rejected since MMS will not approve an exploration plan for an area where permission to enter the area has not been obtained. Since the necessary permission to enter may vary with the statutory source of the private surface title (e.g., 30 U.S.C. 81 and 85), this requirement is intended to notify MMS of potential problems.

30 CFR 211.10(a)(3)(x)

Several comments requested deletion of this paragraph as being "openended." These comments were rejected. The District Mining Supervisor, based on his professional judgment and expertise, may find the information submitted in a proposed plan to be inadequate. In addition, a situation may arise during operations that could require additional data or adjustments to the approved plan. The District Mining Supervisor under MLA has discretionary authority to request such additional data.

30 CFR 211.10 (b) and (c) and 30 CFR 211.80(e) (1) and (5)

One comment stated that the resource recovery and protection plan should be submitted within 3 years from the effective date of the rules of this Part for all undeveloped Federal leases and LMU's. One comment stated that the 3-year resource recovery and protection plan submittal is inadequate for compliance with MLA. Two comments stated that the resource recovery and protection plan should not be required within 3 years. One comment stated that the 3-year submittal deadline for a resource recovery and protection plan is a burdensome requirement. The DOI has determined that the information to be submitted within the 3-year period mandated by Section 7(c) of MLA is necessary in order to enable MMS to determine whether the operator/lessee is in compliance with MLA. No provisions of this final rulemaking prohibit submittal of a resource recovery and protection plan prior to the end of the 3-year period. The DOI has determined that the 1976 amendments to MLA are prospective and therefore the 3-year resource recovery and protection plan submission requirement does not apply to leases issued prior to August 4, 1976, prior to the effective date of the first lease readjustment after August 4, 1976. This has been DOI's policy since the first revision to 30 CFR 211 after August 4, 1976. Since Section 7(c) of MLA mandates the 3-year period, that requirement for leases issued or readjusted after August 4, 1976, cannot be modified by rulemaking. These comments were rejected.

One comment stated that resource recovery and protection plan content requirements are excessive. The MMS believes that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA. This comment was rejected.

Several comments stated that MMS should have a specified time period within which to act on a resource recovery and protection plan. One comment stated it would be "absurd for the operator/lessee to discover that his plan was found to be incomplete years later after the permit application package has been submitted * * *" The MMS disagrees with these comments. The 3-year timeframe for resource recovery and protection plan submittal does not apply to SMCRA permit application submittal. During the time, if any, between the two submittals, additional information may be obtained by the operator/lessee and incorporated in the permit application package. Since the resource recovery and protection plan cannot be approved until the permit application is in an approvable form, any deviations from the original resource recovery and protection plan that are reflected in the permit application must be submitted to MMS in order to ensure that the resource recovery and protection plan and the permit application address the same proposed operation at the time of approval of commencement of mining operations.

Many comments reflected a misunderstanding of the process for approval of proposed mining operations and issuance of a permit. The MMS is responsible for determining that a resource recovery and protection plan is in an approvable form. Under revisions that OSM will soon propose to its Federal lands program [30 CFR Chapter VII, Subchapter D], the regulatory authority would be responsible for determining that a permit application is approvable. The mining plan that the Secretary must approve under Section

523(c) of SMCRA would be the plan for mining leased Federal coal required by MLA. The permit application package submitted to the regulatory authority would consist of the resource recovery and protection plan, the permit application, and other information required by applicable laws and regulations. The regulatory authority's review and approval of the permit application would be independent of the Secretary's approval of the mining plan. The regulatory authority could issue the permit prior to mining plan approval, though commencement of mining operations could not occur prior to mining plan approval. The approved permit would have to conform, however, to the mining plan approved by the Secretary.

The OSM will be responsible for the Secretarial decision document for the approval of mining operations, including preparation of NEPA-compliance documentation. The Secretary in evaluating the proposed mining within the "full spectrum" of requirements, such as NEPA, MLA, and other Federal laws, would not be obligated to accept the recommendations of the regulatory authority or MMS. The Secretary's decision to allow or not allow mining on Federal lands must be based on his independent analysis. Thus, after the Secretary approves or authorizes approval of the mining plan, *and* after the regulatory authority concludes that mining could be conducted satisfactorily on Federal lands within the requirements of SMCRA and issues a permit, mining operations may commence.

Several comments stated that the life-of-the-mine information to be submitted in a resource and protection plan exceeds State-approved regulations. The resource recovery and protection plan is submitted to satisfy MLA requirements. As noted previously, enforcement of MLA requirements cannot be delegated to States. Diligent development and continued operation, as well as the MER requirement, cannot be determined on the basis of the information submitted the SMCRA permit applications. These provisions of MLA require life-of-the-mine data. Thus, these comments were rejected.

One comment stated that the reclamation portion of the resource recovery and protection plan compromises SMCRA reclamation responsibilities. Several comments stated that the data to be submitted in a resource recovery and protection plan were insufficient. Two comments stated that there is a lack of baseline data for a detailed resource recovery and protection plan. Several comments stated that too much detail is required in a resource recovery and protection plan. Section 7(c) of MLA requires the resource recovery and protection plan to address reclamation. The MLA does not, however, specify the level of detail required. Enforcement of MLA, however, requires only sufficient general reclamation information to enable the District Mining Supervisor to determine that MER will be achieved for the life-of-the-mine. As stated previously, MMS has determined that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA. Several comments agreed with this MMS position. One comment stated that a general description of reclamation procedures and practices would be more appropriate than a general reclamation schedule. An LMU operation may last for 40 years. If an operator/lessee were to operate a mine on a Federal lease at the minimum production level to meet diligent development, maintain continued operation, and exercise his full option of paying advance royalty in lieu of continued operation, a Federal lease operation could be in existence for a much longer period of time. During the 40 years or more, reclamation procedures and practices are likely to become more efficient and more cost-effective; they are likely to change in any event. The requirement of a general reclamation schedule allows projections for the life-of-the-mine for associated costs based on today's technology. This information is used to determine that MER will be achieved. It should be noted that as more information becomes available during the life-of-the-mine, the recoverable coal reserves estimate may be adjusted up or down; additional information may also affect the determination that MER will be achieved. Thus, these comments were rejected.

Two comments stated that approved permits should satisfy the 3-year resource recovery and protection plan submittal. The 30 CFR 211.10(b) states that a resource recovery and protection plan is not required if a current mining plan or resource recovery and protection plan has previously been submitted, in accordance with the existing (1981 30 CFR Part 211 and 30 CFR Part 740) rules and contains the information required at 30 CFR Part 211. For a permit to have been approved, the operation must have been in compliance with 30 CFR Part 211. Therefore, existing approved permits satisfy the 3-year resource and protection plan submittal. Several comments requested that MMS coordinate with OSM prior to approval of a resource recovery and protection plan. This coordination is addressed in the BLM–MMS–OSM Memorandum of Understanding on Federal coal. It is also absolutely necessary as is addressed in the preamble discussion of the interrelationships between MMS and the regulatory authority. However, such coordination is procedural, not regulatory and therefore is not addressed in this final rulemaking.

Two comments expressed concern that the regulatory authority would retain approval authority of the resource recovery and protection plan. These concerns have been addressed previously in this preamble.

One comment supported the elimination of the duplicative review process on submitted resource recovery and protection plans and permit applications. One comment stated that it was clear that duplication would be avoided if the resource recovery and protection plan and permit application were submitted concurrently. This provision is covered at 30 CFR 211.10(c)(6) which allows for cross-referencing information submitted concurrently in a permit application.

Two comments requested clarification of the amount of data on non-Federal recoverable coal reserves required in a resource recovery and protection plan for an LMU. The detail must be sufficient to determine the non-Federal recoverable coal reserves in the LMU for the purposes of diligent development and continued operation and to determine that MER of Federal LMU recoverable coal reserves will be achieved. Otherwise these regulations do not apply to lands that do not contain Federal coal. This requirement is addressed at 30 CFR 211.80 (c)(4), (e), and (f)(2).

One comment stated that GMO #1 should not be revised until 30 CFR Part 211 is promulgated as final rulemaking. The MMS agrees. Action on GMO #1 will take place after the effective date of this final rulemaking.

One comment stated that MMS neglected to state what constitutes production from an LMU. Production is deemed to have commenced on the date of the first mining of coal from the LMU recoverable coal reserves. This provision has been inserted at 30 CFR 211.80(e)(6) for clarification.

30 CFR 211.10(c)(3)(i)

One comment stated that the quality data required should not be limited to the list provided since other factors such as sodium content could significantly affect marketing opportunities and therefore affect mine economics and

MER. The MMS agrees that the list is not all-inclusive and the paragraph has been revised accordingly.

30 CFR 211.10(c)(3)(ii)

One comment stated that this paragraph and 30 CFR 211.10(c)(4)(iv)(A) have extended reporting timetables for mining sequence, production rate, and planned sequence of mining in 5-year increments. The MMS disagrees. The information is required by MMS in order to enforce the requirements of MLA. If these data have changed by the time that the SMCRA permit application is submitted, the changes must be supplied to MMS so that both the resource recovery and protection plan and the permit application cover the same proposed operation.

30 CFR 211.10(c)(4)(iii)

One comment stated that "technically" should be deleted from this paragraph. The MMS agrees with this comment in part. The paragraph has been revised to request typical structure cross sections of all coal contained in the operator/lessee's coal reserve base estimate which is the first integral step in the determination of MER.

30 CFR 211.10(c)(4)(iv)(B)

One comment stated that "all fenders" should be changed to "major fenders," and that negligible amounts of coal should not be considered. The MMS disagrees. In making MER determinations, the District Mining Supervisor must know how much coal is to be left in any fender.

30 CFR 211.10(c)(5)

One comment stated that "30 U.S.C. 207(c) and 30 U.S.C. 1258 should be read in *pari materia* [sic]" since the "permit application * * * must contain * * * much more than a reclamation schedule * * *" The MMS agrees. Only the resource recovery and protection plan under MLA contains the reclamation schedule. The permit application under SMCRA will contain the detailed reclamation data for the approved permit area. See also the preamble discussion on the interrelationships of MMS and OSM regarding the resource recovery and protection plan and the permit application package.

One comment stated that because MLA and SMCRA "inherently include overlapping features, the elements of a statute primarily administered by one agency which are more extensively covered in a statute administered by another agency should be delegated to that second agency." The MMS believes that to the maximum extent possible under both statutes this has been accomplished. See also the preamble discussion on the interrelationships of MMS and OSM regarding the resource recovery and protection plan and permit application package.

One comment stated that "for the life-of-the-mine" should be deleted. The MMS disagrees for reasons stated previously. The comment further requested that the "specific contents [should be] listed to show that [the general reclamation schedule] is nonduplicative of the [permit application] * * *" It is not the intent of MMS to dictate nationwide general standards for reclamation. The operators/lessees are aware at the time of permit application submittal that the provisions at 30 CFR Chapter VII must be complied with and, based on this knowledge, the operator/lessee should be able to develop a generalized reclamation schedule when the resource recovery and protection plan is submitted.

One comment requested that a provision similar to the cross-reference to SMCRA for the permit application should be inserted regarding "mining plans." The MMS disagrees. The data submitted to the regulatory authority in permit applications are not sufficient to enable MMS to determine that a proposed operation will be in compliance with the requirements of MLA for the life-of-the-mine. The MMS has determined that the requirements at 30 CFR 211.10 (b) and (c) are necessary to enforce the provisions of MLA.

30 CFR 211.10(c)(6)

To clarify the provisions at 30 CFR 211.10(c)(5) as used in conjunction with 30 CFR 211.10(c)(6), it should be noted that a cross-reference to the data contained in the permit application is inappropriate if submittal of a resource recovery and protection plan precedes submittal of the permit application. The 30 CFR 211.10(c)(6) specifically states that when cross-references are used "a copy of the relevant portion of [the cross-referenced submittal] must be included in" the resource recovery and protection plan.

30 CFR 211.11 Action on Plans.

30 CFR. 211.11(a)(1)

Several comments requested that action on proposed exploration plans should be taken by the District Mining Supervisor "within 60 days from filing" rather than promptly. Due to the interagency coordination required prior to action on plans, the fact that plans as received may not contain sufficient detail thus requiring additional data, and other factors (e.g., inclement weather delaying preoperation inspections), specification of a time period for action on a proposed plan is inappropriate. The MMS will act on plans in a timely manner, i.e., promptly. These comments were rejected.

Several comments stated that the regulation of exploration plans should be delegated to the regulatory authority. These concerns are addressed in the preamble discussion of comments received on 30 CFR 211.10(a). Several comments addressed the interaction of MMS, OSM, and regulatory authority regarding the resource recovery and protection plan, permit application, and permit application package. The preamble discussion of comments received on 30 CFR 211.10 (b) and (c) details these interrelationships.

One comment further stated that in States with approved State programs under SMCRA, approval or denial of a resource recovery and protection plan shall be completed within the permit application package review and approval time period specified under State program requirements. The MMS disagrees. The State cannot impose a time limit on DOI for completing its review process under mandates that cannot be delegated to States. The preamble discussion of comments received on 30 CFR 211.10(b) further clarifies the Federal/State relationship regarding permit issuance.

30 CFR 211.11(a)(2)

Due to the many comments received related to MER, DOI policy from the proposed rulemaking and its preamble is revised and restated below.

In choosing the methodology for determining MER, MMS considered approaches based on economic data and standard industry operating practices. The MMS has decided to determine MER primarily on the basis of standard industry operating practices, supplemented by economic data as necessary. This approach is less burdensome to the mining industry and more administratively efficient; it also provides a satisfactory basis from which the District Mining Supervisor can ensure that the resource recovery and protection plan will achieve MER. Under this approach, MMS will make the MER determination based primarily on the mine design submitted in the resource recovery and protection plan. The DOI believes that this approach will work equally well for captive and noncaptive operations. Where a resource recovery and protection plan shows total mining of all coal beds, the plan itself shows MER will be achieved and no additional data for MER will be required. Where a resource recovery and protection plan

does not show total mining of all coal beds or portions thereof, the resource recovery and protection plan will be analyzed by MMS for its conformance with standard industry operating practices, many of which are dependent on economic conditions for similar operations. The MER determinations will be made giving consideration to existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; exploration, planning, and reclamation costs; and operating, processing, and transportation costs.

Where the analysis indicates that the operator/lessee's mine design does not conform to standard industry operating practices in the region, MMS may require the operator/lessee to submit additional data to justify specific parts of the mine design. Such requests, as warranted, would be on a case-specific basis.

The MMS does not intend to require every operator/lessee to submit additional data to justify MER. Additional data for MER will be requested only where some condition in the resource recovery and protection plan appears not to conform to standard industry operating practices. Standard industry operating practices will be used as the primary basis for determining MER; but it must be stressed that conformity with standard industry operating practices is not dispositive of MER and variances from the practices may be required where case-specific conditions warrant such a variance. The DOI does not intend to use MER to force any operator/lessee to produce coal at the exact "break-even" point. The MMS does not intend to use MER to force a company to mine Federal coal at a loss or to mine Federal coal that cannot be sold under existing market conditions. The burden of establishing MER is on the operator/lessee.

In general, several comments favored the MER definition proposed in the rules and many comments favored the MER definition stated in the preamble. In each instance, comments suggested minor changes in the wording of the definition which they supported. Additionally, several comments rejected both versions for various reasons. The details of these comments are discussed below.

The MLA requires that MMS make an MER determination prior to approval of a resource recovery and protection plan for either a Federal lease or LMU. The statute does not detail the procedures to be used. Although it is inappropriate to include MMS procedures in a definition, a clarifying second sentence has been added at 30 CFR 211.2(a)(24) because of the wide interest in this issue. This second sentence includes those terms which several comments suggested were necessary for consideration in an MER determination. Those terms which are not included in this new second sentence are considered under those which are included. This is further discussed below.

Several comments stated that the costs of compliance with environmental and reclamation laws and regulations need to be included in the MER determination. The definition of MER (30 CFR 211.2(a)(24)) states that "compliance with applicable laws and regulations" will be considered. Additionally, standard industry operating practices include the costs of compliance with environmental and reclamation laws and regulations. The MMS agrees with these comments and has determined that associated costs are included in the term "compliance with applicable laws and regulations."

Several comments suggested that inclusion of a reasonable rate of return should be included in the MER definition. As noted, MMS analysis of an operator/lessee's mine design will include conformance with standard industry operating practices. This analysis assumes that other operators/lessees include a rate of return in their mine design. Rather than set an arbitrary rate of return by rulemaking, which may become obsolete in the dynamic financial market, MMS believes that comparison with standard industry operating practices provides an appropriate method for MER determinations including a rate of return. By the same reasoning, MMS believes that detailed financial analyses, such as a discounted cash flow analysis, are not an appropriate tool for use in the MER determination.

Several comments expressed concern that MMS would use an interpretation of MER which could force an operator/lessee to mine portions of a Federal coal deposit that were either unprofitable or unmarketable. While an operator/lessee may propose to mine coal which is unprofitable if he believes it is in his best interest to do so, it is not MMS policy to use MER to force an operator/lessee to mine Federal coal at a loss or to mine Federal coal that cannot be sold under existing market conditions. This policy is clearly stated in the definition (30 CFR 211.2(a)(24)) and previously discussed in this preamble. These comments were rejected.

Several comments suggested that necessary land use should be included in the MER determination. Specifically mentioned was the siting of mine support facilities over Federal coal, thus rendering a portion of the recoverable coal reserves unrecoverable. The siting of any facility which would render Federal recoverable coal reserves unrecoverable must be justified in a resource recovery and protection plan submittal. Any resource recovery and protection plan that proposes such a siting will be examined to determine whether MER would be adversely affected by the approval. These comments were rejected.

Several comments suggested that the proposed definitions of MER could lead to less coal being mined from Federal leases and high-grading of the deposits. In the comparison of any proposed operation with standard industry operating practices, MMS believes that the assumption can be made that operators/lessees on non-Federal lands, Federal leases, or a combination of both will mine as much coal as is profitable. The District Mining Supervisor is able to determine if high-grading is taking place or if less coal is being mined on a Federal lease than from non-Federal lands. If such a condition is noted, the District Mining Supervisor has authority to request justification for such action under the provisions at 30 CFR 211.10 (b) and (c) and 30 CFR 211.72(a). These comments were rejected.

Several comments suggested that a "prudent man concept" be incorporated in the MER determination as a measure of profitability. Standard industry operating practices indicate what a "prudent man" would do when faced with mining operation decisions which affect profitability. These comments were rejected.

Several comments suggested that standard industry operating practices be determined on a "local or regional" basis. As previously stated in this preamble, "[w]here the analysis indicates that the operator/lessee's mine design does not conform to standard industry operating practices in the region, MMS may require * * * additional data." Thus, MMS agrees with these comments but does not believe that such elaboration is required in the rules of this Part.

Several comments suggested that the MER definition in 43 CFR 3400.0–5 be the same as the definition at 30 CFR 211.2(a)(24). The definition of MER which appears at 43 CFR 3400.0–5 applies only to prelease, that is lease sale, activities and therefore is not binding on any operator/lessee after a lease has been issued. The MER determinations made at the time of approval of a resource recovery and protection plan and upon revision of the

recoverable coal reserves or LMU recoverable coal reserves estimates are the only MER determinations with which operators/lessees must comply. These comments were rejected.

Several comments questioned the meaning of the term "other resources." These comments have been addressed previously in this preamble.

One comment suggested that MER is to be determined only upon approval of the resource recovery and protection plan. The determination of MER is a critical part of any modification of any resource recovery and protection plan (in accordance with 30 CFR 211.11 (b)(2) and (c)(2)) or estimation of recoverable coal reserves or LMU recoverable coal reserves (in accordance with 30 CFR 211.11(a)(3)). This comment was rejected.

30 CFR 211.11(a)(3)

Two comments recommended that provisions be included in the rules for adding and subtracting beds from estimates of LMU recoverable coal reserves. The MMS agrees and the provisions at new 30 CFR 211.11(a)(3) and 30 CFR 211.80(g) reflect these concerns.

The following example illustrates the revision of the estimate of recoverable coal reserves for a Federal lease in accordance with 30 CFR 211.11(a)(3).

Date and Event

4–15–1965, Federal lease issued.
6–1–1968, Mining plan approved.
6–1–1970, Production commences.
8–1–1982, Operator/lessee elects to come under these rules and apply production after August 4, 1976, to diligence. From August 4, 1976, to the date of election, 12 million tons of coal were produced. The District Mining Supervisor estimates the Federal recoverable coal reserves to be 100 million tons.
4–15–1985, Lease readjusted.
5–1–1990, Recoverable coal reserves estimate revised to 70 million tons, based on new information. From date of election to date of revision, 10 million tons of coal were produced.

For the purpose of determining the commercial quantities requirement, the recoverable coal reserves are estimated at the time of election. The estimate includes the recoverable coal reserves estimate of 100 million tons remaining at the time of election plus production of the 12 million tons credited to diligence. Therefore the estimate of recoverable coal reserves at the time of election is 112 million tons, the diligent development requirement and the commercial quantities requirement is 1.12 million tons. Upon acquisition of new information, it is found that the estimate made at the time of election was 30 million tons too high. Therefore, in 1990 the estimate is revised downward from 112 million tons to 82 million tons. The 1990 revision of the estimate is not diminished by the 10 million tons of production achieved between the election and the revision. As a result of the 1990 revision, the commerical quantities requirement is reestablished at 0.82 million tons.

30 CFR 211.11(b)(1)

Several comments stated that this paragraph should contain a provision for consultation with the regulatory authority. The States have authority under SMCRA to regulate exploration for Federal coal only within a permit area after mining operations commence. These concerns are further discussed in the preamble discussion of comments received on 30 CFR 211.10(a). These comments were rejected.

30 CFR 211.11(b)(2)

One comment stated that "this provision [subjects] lessees to further regulations by * * * any governmental entity" and that they "vigorously [contend] that DOI lacks the authority to subject lessees to future regulations * * *." This will be addressed by BLM when it reinitiates its review of the standard Federal coal lease form. The current standard Federal coal lease form contains such a stipulation; any entity has the option not to obtain a Federal coal lease if the entity either disagrees with or cannot comply with Federal lease terms. This comment was rejected.

Several comments stated that a provision should be included to resolve differences in the requirements of OSM, a State regulatory authority, and the District Mining Supervisor. The MMS believes the provision allowing the District Mining Supervisor to "require modifications, after consultation with the operator/lessee and the regulatory authority as necessary" addresses these concerns. If three are disagreements among the entities, differences are raised to higher levels of authority for resolution. This is a procedural rather than regulatory issue. These comments were rejected.

One comment stated that "changes in plans initiated by the District Mining Supervisor * * * should be limited to situations where they are of considerable necessity and should be implemented under reasonable circumstances." The MMS agrees. This is already contained in 30 CFR 211.11(b)(2) by stating that the plans *may* be "revised or supplemented *reasonably* for modification * * *." (emphasis added). The comment further stated that "the reciprocal opportunity for operators to request changes should be viewed reasonably to allow for oversights and unforeseen circumstances." An operator/lessee may request any change, provided the request for the change is accompanied by a written justification as provided at 30 CFR 211.11(c)(2).

30 CFR 211.11(c)

One comment stated that "the modifications section on exploration plans allows the District Mining Supervisor to make sweeping changes at the request of the applicant with no required consulation * * *." The provisions at 30 CFR 211.11(c)(1) state, in part, "[t]he District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, *after consultation* with the authorized officer and the regulatory authority as necessary * * *." (emphasis added) The "as necessary" was inserted because under certain circumstances the regulatory authority does not have to be consulted; for example, the regulatory authority has no jurisdiction over prelease exploration for Federal coal unless more than 250 tons of coal are to be removed. Therefore, were an operator/lessee (see definition of operator/lessee) to request a modification of prelease exploration being conducted under an approved BLM license, the regulatory authority would not be consulted; if less than 250 tons of coal were to be removed, only the authorized officer would be consulted. This comment was rejected.

Two comments stated that the procedures proposed for modifying an approved exploration plan are inconsistent with SMCRA and coal exploration provisions at 30 CFR Part 776 and 30 CFR 815.15, fail to limit the extent of permissible modifications, exclude public participation in violation of SMCRA, MLA, and Federal Land Policy and Management Act and that MMS has no authority to approve modifications to exploration activities within an approved permit area. For modifications inside an approved permit area, MMS will consult as necessary with the regulatory authority to determine if such modifications constitute a major change from contemplated operations approved for the permit area. The other concerns have been previously discussed in this preamble.

Two comments objected to the lack of criteria limiting the extent to which an approved resource recovery and protection plan may be changed by operator/lessee initiative and to exclusion of the public. One comment

also requested that OSM concur, rather than be consulted with, in any modification of an approved resource recovery and protection plan. The consultation provisions of 30 CFR 211.11(c) and the District Mining Supervisor's discretion in approving or not approving modifications of an approved resource recovery and protection plan limit the extent to which an approved resource recovery and protection plan may be changed by operator/lessee initiative. If, during consultation with the regulatory authority, a proposed modification is found to constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit, the provisions at 30 CFR 788.12 and thus 30 CFR Part 786 are automatically implemented by the regulatory authority. Any changes to the conditions of the approved permit by the regulatory authority would automatically constitute concurrence with the modification of an approved resource recovery and protection plan. These comments were rejected.

30 CFR 211.12 Mining Operations Maps.

30 CFR 211.12(a)

One comment stated that the final two sentences of this paragraph "illustrate the type of cooperation or sharing of information between Federal Agencies which can reduce the burden on an operator on Federal coal lands." The comment also urged MMS to utilize this type of cross-referencing to the maximum extent possible.

Two comments requested that the "scale of maps required by [MMS] and the regulatory authority should be the same." The MMS agrees with these comments. This is reflected by the lack of a map scale requirement at 30 CFR 211.10(c) and 30 CFR 211.12 and the nonspecific, but not smaller than 1:24,000, map scale requirement at 30 CFR 211.10(a)(3)(viii).

30 CFR 211.12(b)

One comment stated that this paragraph "is directed solely to mines wherein coal is extracted by conventional underground mining techniques." The comment further stated that "[i]n situ [sic] production of coal does not permit accumulation of data necessary to meet the requirements of paragraph 211.12(b)." The comment recommended the addition of the following two sentences at the end of this paragraph: "The foregoing requirements apply to coal extraction using standard industry [operating] practices for conventional underground mining. When coal mining is to be accomplished by in situ [sic] gasification, the operator/lessee shall submit a program for underground mine maps to the District Mining Supervisor, which upon approval will become the basis for preparation of underground mine maps." The DOI is currently reviewing the mineral leasing laws to determine their applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.20 Diligent Development and Continued Operation Requirement.

Several comments stated that they were opposed to MLA diligence requirements being imposed on Federal leases issued prior to August 4, 1976, unless the operator/lessee elected to be subject to the rules of this Part prior to first lease readjustment after August 4, 1976. The MMS agrees. The provisions at 30 CFR 211.20 and 30 CFR 211.24 have been revised to reflect these concerns.

30 CFR 211.20(a)(2)

One comment opposed the use of any percentage of reserve requirement as a criterion for continued operation in an LMU. The MMS agrees in part. An operator/lessee must mine out the LMU recoverable coal reserves within a 40-year period. Assuming that production at the time that coal was first produced following LMU approval was at the maximum achievable rate to mine out the LMU in 40 years, the operation would have to be producing at least 2½ percent per continued operation year. The MMS believes that imposition of a requirement to produce 1 percent per continued operation year does not impose an onerous burden on the operator/lessee. In addition, an operator/lessee who for some reason cannot produce 1 percent of LMU recoverable coal reserves has the option to request the District Mining Supervisor to approve payment of advance royalty in lieu of this requirement for a total of up to 10 years over the life of the LMU.

30 CFR 211.21 Termination or Cancellation for Failure to Meet Diligent Development and Continued Operation.

30 CFR 211.21(c)

Several comments stated that production from an LMU should be allowed to be prorated to individual Federal leases contained in the LMU upon termination or cancellation for failure to meet diligent development and continued operation for the LMU. Several comments opposed such prorating.

Two comments stated that upon such termination or cancellation of an LMU, Federal leases should be reviewed individually for compliance with MLA. Two comments stated that if an LMU is relinquished or cancelled, individual Federal coal leases should be terminated. Several comments stated that the rules do not adequately address continuation of Federal leases upon such termination or cancellation of the LMU. The DOI has determined that upon termination or cancellation of an LMU, Federal leases automatically are subject to their individual Federal lease terms. Therefore, individual Federal leases would then be subject to requirements imposed on each Federal lease for such MLA requirements as diligent development and continued operation as if the Federal lease had not been included in an LMU. Federal leases may continue after termination or cancellation of the LMU if the Federal leases are in compliance with the individual Federal lease terms. Prorating of recoverable coal reserves would allow operators/lessees to hold certain Federal leases for speculative purposes. By not allowing prorating, DOI is encouraging the development of those Federal leases that are currently economical while forcing noneconomic Federal leases to be relinquished. (See the preamble discussion of comments received on 30 CFR 211.3(c)(2) regarding a "threshold warning system" coupled with "tough penalties.")

One comment stated that if diligent development is met for the LMU, diligent development should have been considered to have been met for all Federal leases contained in the LMU even if the LMU is subsequently terminated or cancelled. The MMS disagrees. Were the LMU to be terminated or cancelled for failure to maintain continued operation, such a suggestion would force the holder of each individual Federal lease to maintain continued operation under its specific Federal lease terms, thus subjecting most if not all such Federal leases to termination. Also, since DOI has determined that the 1976 amendments to MLA are prospective, if one of the Federal leases was issued prior to August 4, 1976, and not readjusted after that date, the continued operation requirement should not be applied unless the holder of the Federal lease has elected to be subject to the

rules of this Part. This comment was rejected.

Several comments questioned the authority of DOI to cancel any Federal coal lease or LMU which fails to meet the 3-year resource recovery and protection plan submittal requirement. One comment stated that no discretion for such a cancellation is allowable; rather, such a provision must be enforced. One comment requested clarification of the language "may cancel" for failure to submit a resource recovery and protection plan within 3 years, versus the language "shall be terminated" for failure to meet diligent development. Failure to submit a resource recovery and protection plan is breach of a *statutory* term in 30 U.S.C. 207(c). The current Federal coal lease form states that DOI will not waive breaches of statutory terms. Although MLA does not expressly require Federal lease cancellation for failure to submit a resource recovery and protection plan within 3 years, DOI *may* cancel a Federal lease for a breach of a Federal lease term. The MLA states in 30 U.S.C. 207(a) that any Federal lease not producing commercial quantities at the end of 10 years "shall be terminated." This termination is not discretionary, nor does it require judicial action like cancellation does. No changes to these rules were made based on these comments.

One comment stated that the cancellation of a Federal lease for failure to meet continued operation should not be discretionary. The MMS agrees with this comment and 30 CFR 211.21(a) has been revised accordingly and continued operation has been deleted from 30 CFR 211.21(c). One comment suggested revising the terms of 30 CFR 211.21(a) by the addition of "during the diligent development period." This comment was rejected as the additional language would be repetitious of 30 CFR 211.2(a) (13) and (14).

30 CFR 211.22 Extension or Suspension of Continued Operation, 3-Year Resource Recovery and Protection Plan Submittal Requirement, and Operations and Production.

One comment stated that authority to promulgate rules for the suspension of operations was not granted to DOE. Section 302(b)(3) of the DOE Organization Act transferred to DOE the authority to promulgate rules relating to suspensions for failure to meet diligence requirements. Since MMS now has promulgation authority for diligent development and continued operation rules, both rules are contained in this final rulemaking.

Several comments stated that extensions provided at 30 CFR 211.22(a)(1) and (b), 30 CFR 211.40(b)(4)(iii), and 30 CFR 211.63 (l), (m), (n), (o), and (p), are contrary to MLA, which does not provide for extensions or suspensions of these requirements. Specifically, it was stated that normal business risks are not justification for suspensions or extensions. The MMS agrees that normal business risks are not justification for suspensions or extensions. However, 30 CFR 211.22 (a)(1) and (b) do not contain any provision that implies this. With respect to extensions, Section 7(b) states, in part, that Federal leases are "subject to the conditions of diligent development and continued operation * * * except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee * * *." Section 7(b) states further that the "Secretary * * *, upon determining that the public interest will be served thereby, may suspend the condition of continued operation * * *." Section 39 of MLA states, in part, that the "Secretary * * *, in the interest of conservation [of resources], shall direct or shall assent to the suspension of operations and production under any lease granted * * *, any payment of * * * minimum royalty * * * likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto." The MMS considers the foregoing to be sufficient authority to promulgate the final rules of this Part as written and rejected these comments.

One comment stated that extensions or suspensions for LMU's should extend the 40-year mine-out requirement. The MMS agrees in part. The DOI has determined that only suspensions under Section 39 of MLA extend the 40-year period.

30 CFR 211.22(a)(1)

One comment stated that Federal leases should only be extended if the lessee appealed on the grounds that the mining plan approval took too much time. The MLA provides only for the *force majeure* provisions contained in 30 CFR 211.22(a)(1).

One comment stated that it was not explained why extensions were deleted for administrative delays and extraordinary circumstances. Several comments stated that extensions for administrative delays and extraordinary circumstances should be allowed. The MLA does not provide for extensions beyond the 10-year period provided in Section 7(b) due to administrative delays and extraordinary circumstances, thus these provisions were deleted. Such extensions were formerly allowed under 43 CFR 3475.4(b) only for Federal leases issued prior to August 4, 1976. Since the rules of this Part will only be applied to such leases upon first lease readjustment after August 4, 1976, or when operators/lessees elect to be subject to the rules of this Part prior to such readjustment, and since such extensions are not allowed for leases issued or readjusted after August 4, 1976, under MLA, these comments were rejected.

30 CFR 211.22(a)(2)

One comment stated that the rules should state a presumption against acceptance of advance royalty in lieu of continued operation. One comment stated that the term "public interest" contained in the "lease [form], the statute, and the regulations" make "public interest" presumptive; thus, MMS would always approve advance royalty paid in lieu of continued operation. Another comment requested the definition of the term "public interest." The acceptance of advance royalty, when the Secretary determines that the public interest will be served, is discretionary under the second sentence of Section 7(b) of MLA. These comments were rejected.

One comment stated that payment of advance royalty in lieu of continued operation should be at the discretion of the operator/lessee. The MMS agrees in part. The rules of this Part provide for the operator/lessee to request that he be permitted to pay advance royalty. However, the District Mining Supervisor has discretion to accept or reject such request under Section 7(b) of MLA.

30 CFR 211.22(b)

One comment was in favor of suspensions of diligent development. The DOI has determined that such extensions are not provided for by MLA. Several comments stated that suspensions should not extend the 10-year diligent development period. The MMS agrees and this final rulemaking has been revised accordingly.

One comment stated that refunds with interest of advance royalty payments should be made where circumstances beyond control of the company prevent the operator/lessee from recovering such payments through mining. The MMS agrees in part. The DOI has determined that in such situations, all excess advance royalty payments shall be refunded; however, no interest that

accrued on the advance royalty payment shall be refunded.

Two comments objected to the direction of a suspension by DOI. The comments stated that a Federal lease could be extended "out of existence" by making extensions longer than the period allowed for the payment of advance royalty. Section 39 of MLA provides for a suspension of operations and production in the interest of conservation. Therefore, these comments were rejected.

One comment state that suspensions of operations should be liberally implemented in consideration of diverse problems and conditions encountered in coal mining. Two comments stated that advance royalty should be suspended in addition to suspension of an operation subject to continued operation. The following discussion clarifies suspensions, exclusions, and extensions allowed by MLA, as amended, specifically by FCLAA.

Section 7(b) of MLA, as amended, conditions Federal coal leases upon "continued operation of the mine or mines" by the operator/lessee. This condition may be excused or suspended in three situations. First, at the operator/lessee's request because of market or similar conditions, the Secretary may "suspend" under Section 7(b) of MLA only the condition of continued operation, as opposed to the entire Federal lease, by accepting advance royalty in lieu of continued operation. The operator/lessee still has beneficial use of the Federal leasehold; rental and Federal lease readjustment periods still run under the Section 7(b) advance royalty suspension. When the Secretary suspends only the condition of continued operation, Section 39 of MLA specifies that the Secretary is not authorized to "waive, reduce, or suspend" advance royalty payments.

Second, the Federal lease condition of continued operation is excused by operation of Section 7(b) of the statute when "strikes, the elements, or casualties not attributable to the lessee" prevent operation. In such cases and if it is "in the interest of conservation," the Secretary may also suspend rental payments and extend the term of the Federal lease under the authority of Section 39.

Finally, the Secretary in the interest of conservation may require or assent to "the suspension of operations and production" under Section 39 of MLA. The Secretary, in other words, is authorized to suspend the Federal lease and all of its conditions including the operator/lessee's right to beneficially use the Federal leasehold. In such cases, suspension of the Federal lease, by terms of the statute, also suspends rental payments and extends the term of the Federal lease.

The MLA thus authorizes exceptions from and suspensions of continued operation in several situations. The DOI has concluded that the restriction on the Secretary's authority contained in the last sentence of Section 39 of MLA is not inconsistent with the construction adopted here. The Secretary is not waiving, reducing, or suspending advance royalty payments when *force majeure* intervenes because there is no condition of continued operation in such situations. Similarly, the Secretary is not waiving, suspending, or reducing advance royalty payments when the Secretary suspends the entire Federal lease "in the interest of conservation." When a Federal lease is suspended under these provisions, the operator/lessee is under no obligation to pay advance royalty because the condition of continued operation is not in force.

This interpretation is further supported by the significant contractual problems that might result from an alternative construction of these three types of relief from the condition of continued operation. For example, if the Secretary were to order a suspension in the interest of conservation for more than a total of 10 years, the operator/lessee would be caught between requirements of Sections 7(b) and 39. Similarly, the Secretary could order a suspension of operations near the end of the primary 20-year Federal lease term and thereby preclude the operator/lessee from recouping the advance royalty payments made prior to the 20th year out of royalty owed on production after the 20th year.

For these reasons, DOI has concluded that the final sentence in Section 39 of MLA does not preclude the Secretary from suspending a Federal lease in the interest of conservation during the period of the lease when it is subject to the condition of continued operation.

30 CFR 211.23 Payment of Advance Royalty in lieu of Continued Operation.

30 CFR 211.23 (a), (b), and (c)

Several comments stated that advance royalty should be allowed in lieu of diligent development. Advance royalty can only be paid in lieu of continued operation (Section 7(b) of MLA) which commences upon achieving diligent development (Section 7(a) of MLA). These comments were rejected.

One comment suggested that a minor change should be made at 30 CFR 211.23(b) to clarify the wording between 30 CFR 211.23 (a) and (b) by inserting "however" at the beginning of the first sentence. The MMS agrees and the change has been made as suggested.

Several comments stated that advance royalty should be made on a schedule that considered the individual Federal lease royalty rate rather than arbitrarily setting 8 percent or 12½ percent flat rates. One comment stated that 8 percent should be the flat rate regardless of the type of mining. Additionally, several comments suggested that advance royalty rates should be based on the schedule of production proposed for the LMU in the resource recovery and protection plan. Several comments were in favor of the proposed wording at 30 CFR 211.23(c). Section 2(d)(4) of MLA states that the "Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit." This mandate is implemented at 30 CFR 211.80 (b) and (e) of the rules of this Part. For the purposes of determining the amount of advance royalty to be paid on an LMU, DOI has determined that 12½ percent and 8 percent are applicable as stated at 30 CFR 211.23(c). Although the District Mining Supervisor may direct establishment of an LMU in accordance with 30 CFR 211.80(b) implementing Sections 2(d)(1) and 2(d)(5) of MLA, DOI has determined that the District Mining Supervisor will only direct establishment of an LMU if it is absolutely necessary to ensure MER of Federal coal bed(s). Absent such direction by the District Mining Supervisor, the operator/lessee would have to agree with approval stipulations for the LMU for which the operator/lessee applied. Thus, any operator/lessee would be able to retract his application for an LMU.

Several comments stated that advance royalty should be based on 1 percent of the Federal LMU recoverable coal reserves. The MMS agrees and the provisions at 30 CFR 211.23(c) have been revised accordingly. See also the preamble discussion of comments received on 30 CFR 211.80(e)(5).

30 CFR 211.23(d)

One comment suggested that the provisions would invite *pro forma* annual requests by operators/lessees to pay advance royalty and suggested the deletion of the fourth sentence. The MMS disagrees. The operators/lessees would not submit *pro forma* applications for the acceptance of advance royalty in lieu of continued operation because action by the District Mining Supervisor accepting such requests would require

the actual payment of such advance royalty, thus tying up capital that could otherwise be used in mining operations. In addition, an operator/lessee would soon use up the maximum 10 years in which advance royalty could be paid. This comment was rejected.

One comment, although supporting this provision, questioned DOI's authority to refuse to accept advance royalty for the full 10 years authorized by MLA. This concern is addressed in the preamble discussion of comments received on 30 CFR 211.22(a)(2).

30 CFR 211.24 Crediting of Production Toward Diligent Development.

30 CFR 211.24(b)

Several comments stated that the operators/lessees should be allowed to elect to apply production for Federal leases issued prior to August 4, 1976, to diligent development rather than elect not to apply production. The MMS agrees and the provisions at 30 CFR 211.24 have been revised.

30 CFR 211.24(g)

One comment stated that production achieved before formation of an LMU should be applied toward diligent development for the LMU. The MMS agrees. The provisions at 30 CFR 211.24(g) have been revised to state that Federal production may be so applied toward diligent development.

30 CFR 211.25 Special Logical Mining Unit Rules.

30 CFR 211.25(a)

Several comments suggested inserting the phrase "of production in commercial quantities and" after the word "requirements." These comments were rejected because achievement of diligent development and maintaining continued operation, by definition, requires production of commercial quantities.

30 CFR 211.25(b)

One comment requested that DOI allow flexibility for achievement of diligent development if an LMU were enlarged or diminished. The MMS disagrees for reasons stated earlier in this preamble that resulted in the revisions at 30 CFR 211.80(g).

30 CFR 211.40 Performance Standards for Exploration and Surface and Underground Mining.

30 CFR 211.40(a)(1)

Two comments stated that rules governing exploration need to be more clearly delineated with respect to MMS, BLM, and regulatory authority responsibilities. Two comments suggested substituting State performance standards for Federal performance standards. One comment stated that these rules should only apply to exploration activities on federally leased or licensed lands and not to development activities in a permitted area. These comments are addressed in the preamble discussion of comments received on 30 CFR 211.10(a).

30 CFR 211.40(a) (2) and (3)

Two comments stated that it should be the responsibility of the operator/lessee to ensure against potential hazards (e.g., blowouts) when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources. The MMS agrees that it is the responsibility of the operator/lessee to ensure against potential hazards. However, it is the responsibility of MMS to enforce Federal mandates to conserve resources, protect the environment, and protect public health and safety. These comments were rejected.

One comment stated that there should be flexibility in regulating plugging and abandonment. Another comment stated that the requirement of 5 feet of cement for capping of holes is unreasonable. Another comment stated that as written this provision is overregulation. The first sentence at 30 CFR 211.40(a)(3) was miswritten in the proposed rules. This paragraph has been reordered in this final rulemaking. When read with this revision, it is clear that 5 feet of cement is the minimum cap and that exploration activities must be managed in a manner approved by the District Mining Supervisor to prevent pollution or mixing of waters and ensure safety. Flexibility is already addressed by the fact that lesser caps or plugs may be approved by the District Mining Supervisor.

One comment questioned the applicability of Federal regulations when in conflict with State regulations. It is not the intent of DOI to supersede State requirements where a State has jurisdiction.

One comment stated that more stringent plugging standards are needed. Where conditions warrant, the District Mining Supervisor has discretionary authority to impose more strict requirements.

30 CFR 211.40(a)(4) and (5)

Several comments stated that the requirement that representative core samples be retained for 1 year is an unnecessary burden on operators/lessees.

The MMS agrees with these comments. The 30 CFR 211.40(a)(4) has been revised accordingly. The District Mining Supervisor *may* require that an operator/lessee keep representative samples of drill cores for 1 year.

Two comments stated that the District Mining Supervisor does not have authority to authorize conversion of drill holes to water wells. The MMS does not assume any regulatory authority over water use from such a converted well. This provision is intended to allow the surface owner or authorized officer to request that a drill hole be converted to a water well rather than to force an operator/lessee to abandon the drill hole in accordance with 30 CFR 211. This request must be approved by the District Mining Supervisor, because such a request must be treated as an amendment to the approved exploration plan. The District Mining Supervisor's primary concern on this issue is to determine that final liability for securing the drill hole is accepted by a responsible party. Appropriate consultation must be made as provided for at 30 CFR 211.40(a)(5) so that the jurisdiction of the State over rights to the water is not compromised.

30 CFR 211.40(b)(1)

One comment stated that MMS is obligated "to proceed with due regard for the conservation of unique paleontological and archeological resources * * *." This protection is included as standard Federal coal lease terms and, with respect to regulating surface coal mining operations, falls under the purview of the regulatory authority pursuant to 30 CFR Chapter VII, Subchapter K (specifically 30 CFR 810.2(h)).

One comment stated that this paragraph "violates Section 3(c) [sic] of FCLAA which calls for an independent examination of alternative mining methods." Section 2(a)(3)(C) of MLA does contain such a requirement. However, this Section 2(a)(3)(C) requirement applies solely to a prelease evaluation. The authority for 30 CFR 211.40(b) is Section 2(d)(1) of MLA (Section 5(b) of FCLAA) for LMU's. A different part of Section 2(a)(3)(C) of MLA (Section 3 of FCLAA) pertains to mining plans regarding MER. In neither case is an examination of alternative mining methods either the sole or a mandatory criteria for postlease MER determinations. The comment continues, stating "MER can be used as a technology forcing [sic] standard to compel lessees to employ new technologies to increase the amount and rate of coal production." The MMS agrees. Standard industry operating practices require operators/lessees to maintain state-of-the-art capability in order to remain competitive in mining

and marketing of coal. The MMS believes that standard industry operating practices are the most accurate indicator of state-of-the-art.

30 CFR 211.40(b) (3) and (4)

One comment stated that these paragraphs and "30 CFR 211.80(h) (6) and (7) [sic]" are redundant. The MMS agrees that the proposed revisions were redundant; however, it is necessary to retain some duplicative language because diligent development, continued operation, and royalties are handled differently for Federal leases than for LMU's. The diligence provisions proposed at 10 CFR 378 have been incorporated in this final rulemaking. See preamble discussion of comments received on 30 CFR 211.1(c)(4) and the associated tabulation of revised paragraphs.

30 CFR 211.40(b)(5)

Several comments stated that this paragraph imposes an onerous burden and requested that it be deleted. The MMS agrees. This paragraph has been deleted and the rest of 30 CFR 211.40(b) renumbered accordingly. If an operator/lessee elects to store waste for later processing, the provisions at 30 CFR 211.63(k) shall apply.

30 CFR 211.40(b)(9)

Two comments commended the word changes in this paragraph as improvements on the 30 CFR 211 proposed rulemaking of May 19, 1980. One comment stated further that "coal preparation also results in inherent losses of coal in processing, and requires a prudent operator to consider the overall effect and extent of preparation versus the alternative of not processing to achieve overall economies of resource recovery." The MMS agrees, as is reflected in the wording at 30 CFR 211.40(b)(1) that the operator/lessee shall consider coal preparation operations to avoid wasting of coal and to encourage achieving of MER. It is not a requirement that all operations contain coal preparation operations. Individual operations and specific operating economics will determine whether an operator/lessee proposes to use coal preparation facilities.

30 CFR 211.40(c) (2) and (e)

One comment recommended that OSM and MMS coordinate closely on regulations such as those regarding subsidence and auger mining. The MMS agrees. At the time of permit application package review, MMS will review the resource recovery and protection plan under its MLA responsibilities concurrently and in coordination with the regulatory authority's review of the permit application package under its SMCRA responsibilities.

One comment noted that this paragraph does not apply to synthetic fuels production and requested that two sentences applicable to *in situ* gasification operations be added to the paragraph. The DOI is currently reviewing the mineral leasing laws to determine the applicability to, and implementation of regulations for, synthetic fuel production methods. Regulations related to synthetic fuel production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.40(c)(3)

Several comments expressed concern regarding top coal being used as primary roof support in underground mines. This paragraph was written primarily to address top coal left by standard mining technologies. The first sentence of this paragraph has been revised accordingly. One of the comments further stated that this paragraph "appears to contemplate the top-slicing method only." The 30 CFR 211.40(c)(3) specifically does not exclude advanced technologies.

30 CFR 211.40(c)(4)(i)

Several comments stated that it should be permissible to mine lower bed(s) before the upper bed if the upper bed is not economically recoverable or where such recovery of the lower bed(s) would not cause subsidence or interaction with the upper bed. The MMS agrees.

The paragraph as written allows operators/lessees to justify such sequencing to the District Mining Supervisor.

30 CFR 211.40(c)(6)

One comment stated that abandonment of a mining area due to thinning of coal beds or reduction in quality of the coal should be at the discretion of the operator/lessee. This comment was rejected because the District Mining Supervisor must adjust the determination of MER under such circumstances as required by MLA and implemented at 30 CFR 211.40(c)(7).

30 CFR 211.40(d)(2)

One comment stated that this paragraph "attempts to completely defeat MER * * *." This comment was rejected. As written, the paragraph allows changes in the mining operations which may be necessary to reflect such factors as differing coal quality or unsuspected geologic conditions.

30 CFR 211.40(d)(3)

One comment stated that abandonment of a mining area under this paragraph should be at the discretion of the operator/lessee. This comment was rejected. See preamble discussion of comments received on 30 CFR 211.40(c)(6).

30 CFR 211.40(d)(4)

One comment recommended that the word "necessary" be changed to "possible." This comment was rejected because such a word change could be construed to require that every method for extinguishing a fire be applied immediately. "Necessary" takes into account the safety of the personnel who could be affected.

30 CFR 211.40(d)(5) and 30 CFR 211.41 Completion of Operations and Abandonment.

Several comments stated that all "abandonment proposals should involve the [regulatory authority (RA)] at an early date in order for RA review and approval." These comments were rejected because either temporary or permanent abandonment of mining operations, as used in the rules of this Part, applies to resource recovery and protection plan requirements only. Such provisions in no way infringe upon the purview of the regulatory authority pursuant to 30 CFR Chapter VII, Subchapter K, or upon the purview of BLM pursuant to 43 CFR Part 3400.

30 CFR 211.62 Reports.

30 CFR 211.62(a)

One comment stated that there appears to be an unnecessary duplication of filing of exploration reports in the three paragraphs. The MMS agrees and this paragraph has been clarified accordingly.

Several comments stated that the reporting requirement for exploration licenses should only be at the end of the 2-year license term. Exploration license data are necessary at least annually so that Federal lease tract delineation can be conducted as efficiently as possible using the maximum amount of data available. These comments were rejected.

30 CFR 211.62(b)(7)

Several comments requested deletion of "geologic interpretation." The MMS agrees with this deletion. The paragraph has been amended accordingly and is now codified at 30 CFR 211.62(c); the rest of 30 CFR 211.62 has been renumbered accordingly. The remaining language states that if a licensee generates any recoverable coal reserves

or coal reserve base estimates based on the data obtained under the exploration license, they shall be submitted to the District Mining Supervisor. It should be noted that since these estimates were based on data obtained from an exploration license, the information is deemed proprietary in accordance with Section 2(b)(3) of MLA as implemented at 30 CFR 211.6.

30 CFR 211.62(b)(10)

One comment stated that any request for additional information "should be required only upon the statement of specific reasons for needing such data on an individual case basis." The only time the District Mining Supervisor requests additional information is to ensure that the operator/lessee is in compliance with MLA as regulated by MMS. These provisions are not intended to be a harassment mechanism.

30 CFR 211.62(d)(1)

One comment stated that consideration "should be given to allowing quarterly royalty payments and reports rather than monthly submissions." The 30-day period following the end of the period covered by the report does not require monthly reporting. Each Federal lease contains a specific term establishing the royalty reporting period. Prior to enactment of FCLAA, 30 U.S.C. 207 (Section 7 of MLA) required royalties to be paid at least quarterly. The FCLAA deleted this requirement. Following final rulemaking for 43 CFR Part 3400 and 30 CFR Part 211, DOI will revise the standard Federal coal lease form. This concern will be addressed at that time.

30 CFR 211.62(e)

One comment stated that some "proof of adverse intend [sic] is needed before a double royalty is imposed for failure to report the true weight or value of coal mined." Since "adverse intent" is not a commonly used or understood standard, this paragraph has been revised to require the penalty when an operator/lessee "knowingly" records or reports less than the true weight or value. It is the responsibility of the operator/lessee to ensure that such oversights or inadvertent errors do not occur.

30 CFR 211.63 Royalties.

30 CFR 211.63(b)

One comment was in favor of the overriding royalty provisions. Several comments stated that the override provisions would not significantly affect the ability to finance a mining venture. Several comments stated that the override limitations could adversely affect financing and that financing agreements should not be considered an override. Several comments stated that production payments for financing should not be considered an override. The 30 CFR 211.63(b) states that overriding royalty interests and production payments or other similar interests are not constrained by the 50 percent override limitation when these interests are created in order to finance a mine. The 30 CFR 211.63(b) adequately addresses the concerns expressed by these comments.

One comment stated that production payments should not be considered an override. Production payments are not overriding royalty interests. However, production payments reduce the profit realized by the operator/lessee. As profit decreases for a property, the amount of recoverable coal reserves may decrease. Therefore, in the interest of conservation, both overriding royalty interests and production payments are not allowed unless created in order to finance a mine.

One comment stated that the original lessee should be able to retain override interests for improvements if the assignee subsequently reassigns the Federal lease. Override interests created in order to improve a mine are not affected by subsequent assignments of Federal lease.

Two comments stated that the 50 percent override limitation was unnecessary since an assignment would not occur if the override was excessive or a burden on the assignee. The MMS disagrees. The 50 percent limitation will prevent speculation and undue dealing in Federal coal leases by intervening interest owners.

Two comments stated that the 50 percent override limit should apply to the Federal lease royalty rate in effect at the time of assignment, not the royalty rate for the Federal lease at issuance. The 50 percent limitation applies to the Federal royalty due on production. The term "first payable" means paid first out of any unit of production to the United States, which as lessor has first claim on proceeds to satisfy its royalty. Overrides are "second" and "third" payable after the Federal royalty. The 30 CFR 211.63(b) has been modified by the deletion of "rate of" to clarify the administrative intent of the 50 percent limitation.

Two comments stated that net profit shares or other interests should only be considered an override if calculated directly on production. Two comments stated that net profit interests allow for an override in excess of 50 percent and should not be allowed. The term "net profit shares" has been deleted.

One comment questioned what constitutes expenditures for Federal lease improvements. Expenditures for improvements are allowed as the basis for a greater than 50 percent override on a case-by-case basis. In general, only expenditures that are directly related to development of the Federal lease will be allowed.

Several comments identified differences between the 30 CFR 211.63(b) and 43 CFR 3473.3–2(c) override provisions and questioned which governs. The differences have been resolved in this final rulemaking.

30 CFR 211.63(c)(1)

One comment stated that the phrases "whenever necessary to promote development" and "cannot be successfully operated under its terms" are too broad. The MLA (30 U.S.C. 209) specifically provides the Secretary with discretionary authority to reduce royalties for these purposes. This comment was rejected.

Several comments objected to giving royalty reduction approval to the District Mining Supervisor. These comments stated that the Secretary should exercise approval authority. The Secretary has delegated approval authority to the District Mining Supervisor. These comments were rejected.

Several comments stated that reduction of royalties is inconsistent with DOI's goal to increase production. Two comments stated that reductions reduce revenues to the Federal Government. The MLA (30 U.S.C. 209) authorizes royalty reductions in order to promote development or whenever the Federal lease cannot be successfully operated under Federal lease terms. Reductions are often essential to allow for increased production. In addition, revenues will not be reduced because royalty reductions will enable operators/lessees to extract coal that would be uneconomic under Federal lease terms and would not be produced.

Two comments stated that unwarranted relief should not be allowed via reductions. One comment stated that reductions subsidize bad business judgment and poor mine design. The 30 CFR 211.63(c) specifies criteria for a royalty reduction and, in accordance with 30 CFR 211.63(c)(3), royalty reductions will not be approved unless they are warranted and meet the criteria. Royalty reductions are not intended to subsidize marginal or poorly run operations.

One comment stated that allowing reductions implies that too much Federal coal has been leased. Royalty

reductions are not related to additional coal leasing. Reductions are based on current operational difficulties; they are granted in the interest of conservation. If royalty reductions are not allowed, additional leasing may be necessary to replace production that could have been achieved had a royalty reduction been granted.

Two comments stated that deletion of the 5 percent floor for reductions for underground operations was not addressed by the environmental assessment for revision to the regulations. The environmental assessment on the proposed rules addressed removal of the 5 percent floor on pages 2 and 16. These comments were rejected.

One comment stated that the limit for reductions for underground minable coal should be specified. One comment stated that reductions below 5 percent for underground coal should only be granted for difficult operations or to make an underground operation competitive with a surface operation. One comment questioned how the 5 percent floor applies to a surface mine that subsequently shifts to underground mining. One comment was in favor of removal of the 5 percent floor and one comment questioned whether royalty for an *in situ* operation could be reduced below 5 percent. The MLA does not specify a minimum limit for royalty reductions for underground or surface mines. Royalties can be reduced, but in no case can they be reduced to zero. To make royalty reduction provisions consistent for underground and surface operations, the 5 percent floor was removed for underground operations. This revision is not inconsistent with 30 U.S.C. 209. A minimum royalty has not been specified in the rules of this Part because the degree of reduction varies by operation and type of operation.

One comment stated that granting reductions without notice to the public, other operators, or the regulatory authority is destructive to the public interest. As previously stated in this preamble, MMS believes that the provisions at 30 CFR 211.5(a), which make decisions of the District Mining Supervisor available for public inspection provide adequate public notice.

Several comments were in favor of the 30 CFR 211.63(c)(1) provisions as written.

30 CFR 211.63(c) (3) and (4)

One comment stated that the reduction criteria are vague and that MMS royalty reduction guidelines do not have force or effect of law. The information necessary for evaluating a royalty reduction varies on a case-by-case basis. The application requirements at 30 CFR 211.63(c) have been written to request general data applicable to most operations. In order not to require information irrelevant to an operation, MMS has developed guidelines that more adequately address specific situations. The guidelines detail the information required by the provisions at 30 CFR 211.63(c) and derive their authority from that same paragraph. Therefore, this comment was rejected.

One comment recommended that "act" at 30 CFR 211.63(c)(4) should be changed to "grant." This comment was rejected since it would deny the District Mining Supervisor discretion to consider relevant factors not included in the application.

30 CFR 211.63(d)

Two comments stated that royalty payments should be allowed on a quarterly rather than monthly basis. As noted, the royalty reporting period is specified in individual Federal leases.

One comment stated that production royalty for an LMU should be based on the Federal lease royalty rate. The MMS agrees. The royalty paid on coal produced from the LMU is based on the royalty rate for the Federal coal leases from which production is achieved. No Federal royalty is due for non-Federal coal.

30 CFR 211.63(e)

One comment stated that the District Mining Supervisor should not have authority to assess royalty on inventory. The assessment of royalty on inventory is determined on a case-by-case basis. A royalty will be assessed only where the inventory is in excess of operational needs. This comment was rejected.

30 CFR 211.63 (f) and (g)

Many comments objected to including reimbursed and nonreimbursed royalties and fees in the gross value. Two of the comments also objected to including reimbursed and nonreimbursed transportation costs; and one objected to including reimbursed and nonreimbursed cleaning costs. The comments asserted that inclusion of reimbursed and nonreimbursed royalties and fees in gross value was inflationary, anticompetitive, contrary to MER, decreased the value of coal especially where royalties and fees are high, and contrary to environmental protection and public welfare. It was also stated that production would be curtailed by the higher royalty due. Several comments asserted that gross value should be the unit sale or contract price minus royalties and fees. Two comments stated that gross value should be the "F.O.B." mine price excluding all royalties and fees. One comment stated overriding royalties should be excluded from gross value. Many comments stated a preference as to the point where gross value should be determined. Several comments stated the point for gross value determination should be at the mine mouth, one stated at the mine after primary crushing, and three stated at the point of sale. One comment asked for clarification of when transportation or processing costs can be excluded from gross value in accordance with 30 CFR 211.63(h). All of these comments are addressed in the discussion of comments received on 30 CFR 211.2(a)(20).

30 CFR 211.63(i) and (j)

Several comments questioned the procedures that MMS will use for gross value determinations for *in situ* technology. As previously stated, rules governing *in situ* technology will be promulgated at a later date. These comments will be considered as part of that rulemaking.

30 CFR 211.70 Inspections.

30 CFR 211.70(a)

Several comments asserted that the provisions were overly broad and that the District Mining Supervisor's authority should be limited to MLA responsibilities at 30 CFR 211.70(b). The District Mining Supervisor has authority to inspect operations to determine compliance with *applicable* laws. This concern has been addressed in this preamble.

30 CFR 211.72 Enforcement.

30 CFR 211.72(a)

Two comments stated that elimination of OSM's enforcement role on Federal lands is contrary to SMCRA. The responsibilities of OSM under the interim Federal Lands Program are detailed at 30 CFR Part 211 (1981) and remain in effect until repromulgated or deleted by OSM (see 30 CFR 211.1(a) and the introductory discussion of RELATION TO OSM'S FEDERAL LANDS PROGRAM). These comments were rejected.

30 CFR 211.72(b)

One comment suggested that all orders issued by mail be sent via certified mail, return receipt requested. The MMS agrees and 30 CFR 211.71(b) has been changed accordingly.

30 CFR 211.72(c)

One comment suggested that the provisions at 30 CFR 211.72(c) be sparingly applied. The provisions will be applied by the District Mining Supervisor following an assessment of the situation utilizing his professional judgment. This comment was rejected.

30 CFR 211.72(d)

One comment stated that this provision is too broad. This comment was rejected. Enforcement of SMCRA provisions is authorized *only* in emergency situations by Section 521(a)(2) of SMCRA and may be appealed pursuant to 43 CFR Part 4.

30 CFR 211.73 Appeals.

One comment suggested setting a time limit for processing appeals. The time required to process an appeal is dependent on the complexity of the appeal and varies for different actions under appeal. Setting a time limit for processing an appeal would not be conducive to a thorough review. Therefore, this comment was rejected.

One comment suggested that in order to reduce processing time, appeals pursuant to 30 CFR Part 290 should be waived in favor of utilizing procedures contained in 43 CFR Part 4. Any notice or order issued pursuant to 30 CFR 211.72(e) is processed in accordance with 43 CFR Part 4. Other notices or orders issued by the District Mining Supervisor, if appealed, must first be processed pursuant to 30 CFR Part 290.

30 CFR 211.80 Logical Mining Units.

30 CFR 211.80(a)

Several comments favored deleting the requirement for automatic LMU designations.

Two comments opposed removing the policy on automatic formation of LMU's. They further stated that no basis was given for this change and that the change was not conducive to future planning for the lands' nonfuel resources. The diligence requirements of the 1976 amendments to MLA do not apply to Federal leases issued prior to August 4, 1976, until the first lease readjustment after August 4, 1976. Since the 40-year mine-out period is a diligence requirement for LMU's, it will not be applied to Federal leases issued prior to August 4, 1976, without consent of the affected operators/lessees. The MLA requirement that a resource recovery and protection plan for the life-of-the-mine be submitted 3 years from lease issuance or first lease readjustment after August 4, 1976, is conducive to land-use planning. The two comments opposing discretionary LMU formation were rejected.

30 CFR 211.80(b)

Several comments stated that the District Mining Supervisor should not be given authority to order formation of an LMU. The MLA authorizes the Secretary to require an operator/lessee of a lease issued or readjusted after August 4, 1976, to form an LMU. The Secretary has delegated this authority to the District Mining Supervisor. These comments were rejected.

One comment requested clarification of circumstances in which a District Mining Supervisor would require formation of an LMU. The District Mining Supervisor may only require formation of an LMU when MER of the coal deposit(s) would be increased in accordance with Section 2(d)(1) of MLA.

One comment suggested that 30 CFR 211.80(b) be modified to make it clear that an operator/lessee has the option of creating an LMU for Federal leases issued prior to 1976. The MMS agrees and 30 CFR 211.80(b) has been modified to reflect this change.

Several comments stated that only Federal leases included in an LMU should have their terms amended for consistency with stipulations required for approval of the LMU. The rules of this Part are intended to apply only to Federal coal leases. The wording in this paragraph has been modified to reflect more clearly this intent.

Two comments stated that Federal lease terms should only be amended at lease readjustment. Also, one comment stated that royalty rates should not be amended at the time of LMU formation. The MLA provides for amendment of any Federal lease term so that mining under that lease will be consistent with requirements imposed on that LMU. Under these rules, royalty rates do not enter into determination of the establishment of an LMU. The 30 CFR 211.80(e)(4) states that royalty rates will not be amended at the time of LMU formation. Further, royalty rates will only be subject to change at the times of Federal lease readjustment.

One comment asked whether a Federal lease issued prior to August 4, 1976, and included in an LMU is subject to diligence requirements and the 40-year mine-out provision. One comment stated that Federal lease obligations should not be increased if such a lease is included in an LMU. Section 2(d)(5) of MLA states "[l]eases issued before the date of enactment of this Act may be included *with the consent of all lessees* in such logical mining unit and if so included, *shall be subject to the provisions of this section.*" (emphasis added) Therefore, leases issued prior to August 4, 1976, included in an LMU will be subject to diligence requirements and the 40-year mine-out period. These comments were rejected.

30 CFR 211.80(c)(3)

Several comments stated that the term "effective control" should only apply to coal mining operations. The rules of this Part are intended to require the operator/lessee to demonstrate his right to enter and mine all recoverable coal reserves contained in the proposed LMU. The rules of this Part have been modified to more clearly reflect this intent. It should also be noted that an approved permit under SMCRA is not a prerequisite to *formation* of an LMU.

One comment requested clarification of the criteria that MMS will use to determine what constitutes a sufficient property interest in particular lands to include them in a proposed LMU. Legal documentation conferring upon the operator/lessee the right to enter and extract recoverable coal reserves from the proposed LMU, or if the land contains no coal, to use the surface for coal mining purposes, constitutes effective control. The determination of sufficient property interest for establishment of effective control will be made on a case-by-case basis.

30 CFR 211.80(c)(4)

Two comments stated that an LMU application should not be required to contain a resource recovery and protection plan. This was not the intent of the paragraph; 30 CFR 211.80(c)(4) has been deleted and the remainder of 30 CFR 211.80(c) has been renumbered.

30 CFR 211.80(c)(5)

One comment stated that 30 CFR 211.80(c)(5) gives the District Mining Supervisor too much authority to require additional information. For the District Mining Supervisor to fulfill his responsibilities under MLA, additional information be required. The additional information will be used to facilitate review of the LMU application. This comment was rejected.

30 CFR 211.80(d)

One comment stated that the District Mining Supervisor should consult with the LMU applicant about deeper bed(s) that may be subject to reclassification from resources to reserves for *in situ* operations during the 40-year mine-out period. The 30 CFR 211.11(a)(3) states that recoverable coal reserves estimates may be adjusted as new information becomes available. Additionally, regulations related to synthetic fuel

production will be promulgated at a later date. This comment will be considered in that rulemaking.

30 CFR 211.80(e)

Two comments stated that the 40-year mine-out period can be avoided by not forming an LMU. Section 2(d)(2) of MLA imposes the 40-year mine-out requirement only on LMU's. The MLA does not impose this requirement on Federal leases. The Federal lease mine-out period will be controlled by provisions of diligent development and continued operation.

One comment asserted that the 40-year mine-out period is too short. Several comments stated that the 40-year mine-out period should begin after diligent development for the LMU has been achieved. Section 2(d)(2) of MLA specifies that the LMU shall "be *mined* within a period * * * which shall not be more than forty years." (emphasis added) This provision cannot be altered by rulemaking. The DOI has determined that it is consistent with legislative history of the 1976 amendments to MLA that the date that coal is first produced (i.e., mined) from the LMU following the effective date of LMU approval is the latest date that the 40-year mine-out period can commence. These comments were rejected.

30 CFR 211.80(e)(1)

One comment asked what time limitation is imposed on the resource recovery and protection plan, since a resource recovery and protection plan does not have a 40-year mine-out requirement unless it covers Federal leases in an LMU. One comment stated that there is a discrepancy between proposed 10 CFR 378.303(b) and 30 CFR 211.80(e)(1). The proposed 10 CFR 378.303(b) more accurately reflected the MLA requirement. Therefore, 30 CFR 211.80(e)(1) has been revised accordingly.

30 CFR 211.80(e)(5)

One comment requested clarification of the amount of detailed information, particularly with respect to recoverable coal reserves and the treatment of proprietary data, that would be required for non-Federal lands to be included in a proposed LMU. All proprietary data submitted will be treated in accordance with 30 CFR 211.6. The MMS must have separate estimates of Federal LMU recoverable coal reserves and non-Federal LMU recoverable coal reserves in order to determine that MER of Federal LMU recoverable coal reserves will be achieved. The total LMU recoverable coal reserves are needed so that MMS can ensure that the LMU meets diligent development and continued operation requirements, especially where production from non-Federal recoverable coal reserves is used to satisfy these requirements. The provisions at 30 CFR 211.80(e)(5) have been revised to reflect more accurately the requirement that both recoverable coal reserves estimates must be submitted to the District Mining Supervisor.

30 CFR 211.80(f)(3)

One comment questioned whether, when a portion of a Federal lease is segregated into a new Federal lease, all reserves under that portion of the Federal lease are consigned to the new Federal lease. One comment questioned whether the lessee of a segregated Federal lease would be forced to relinquish any part of the Federal lease. One comment questioned whether a single Federal lease could be included in two LMU's.

A new Federal lease formed by segregation could include all leased reserves of that portion of the original Federal lease or only specific bed(s). Where two LMU's cover a single Federal lease, the Federal lease would have to be segregated by bed or portion of bed so that separate Federal leases would be created for each LMU. No operator/lessee will be forced to relinquish a Federal lease or portion of a Federal lease that is in compliance with MLA requirements.

Several comments questioned whether a new Federal lease created as a result of a segregation would be subject to the Federal coal leasing program. Federal leases created by segregation retain rent and royalty provisions of the original Federal lease and will be subject to readjustment at the same time that the original Federal lease is subject to readjustment. Federal leases created as a result of segregation are not new Federal leases issued under MLA and do not require additional NEPA documentation.

One comment stated that segregation of a Federal lease or relinquishment of a portion of a Federal lease should not be restrained by legal subdivisions. The general practice is to lease by legal subdivisions. This practice will not be changed for purposes of Federal lease segregation or relinquishment. This comment was rejected.

One comment asserted that DOI should implement this paragraph in a way which would reflect individual circumstances of each Federal lease. The MMS agrees with this comment. The intent of the rules of this Part is to provide for flexibility based on case-specific circumstances.

30 CFR 211.80(g)

One comment asked whether recoverable coal reserves can be modified if boundaries of an LMU remain unchanged. The District Mining Supervisor has authority to adjust LMU recoverable coal reserves estimates in accordance with 30 CFR 211.11(a)(3).

One comment stated that termination of an LMU should be allowed at the operator/lessee's request and that Federal leases contained in the LMU continue in effect after termination of the LMU. One comment stated that a lessee should be allowed to relinquish part or all of the Federal leases or beds in an LMU. The LMU's cannot be terminated by *any* party unless the operator/lessee has failed to comply with diligent development, continued operation, the 3-year resource recovery and protection plan submittal requirement, the 40-year mine-out requirement, or the operator/lessee has relinquished all Federal leases in the LMU. In order to clarify this issue further, the language at 30 CFR 211.80(h)(4)(iii) has been incorporated at 30 CFR 211.80(g).

One comment questioned whether the 40-year mine-out period changes if additional land or reserves are added to the LMU. The 40-year mine-out period is not affected by any modification to an LMU. This position is reflected at 30 CFR 211.80(g).

Several comments stated that diligence requirements and the 40-year mine-out period should be revised when an LMU is enlarged or diminished. Although an increase or decrease in the amount of LMU recoverable coal reserves based on new information (see 30 CFR 211.11(a)(3)) will affect the amount of recoverable coal reserves that must be produced to satisfy the commercial quantities requirement for diligent development and continued operation, the 40-year mine-out period imposed on the LMU cannot be changed by an increase or decrease of the amount of LMU recoverable coal reserves, regardless of the method used to increase or decrease reserves (see 30 CFR 211.80(g)). Therefore, these comments were rejected.

One comment requested clarification of diligent development and continued operation requirements where production occurs within a portion of an LMU, and that portion is subsequently eliminated from the LMU. The DOI interprets 30 CFR 211.25(a) to mean that production from anywhere within the LMU will be credited toward diligent development and continued operation of the entire LMU. The production is LMU-

specific and does not change with modification of LMU boundaries.

30 CFR 211.80(h)

Several comments stated that the starting point of the 40-year period was unclear. The intent of proposed 30 CFR 211.80(h)(1) was that the 40-year LMU mine-out period will begin on the date that coal is first produced following approval of the LMU. The provisions at 30 CFR 211.80(e)(6) have been revised to clarify this intent.

One comment stated that the 40-year period should start upon the date that diligent development is achieved for the LMU. Several comments stated that beginning the 40-year period upon production was contrary to MLA and was not addressed in the supporting documentation. The DOI does not believe that operators/lessees should be penalized for not being in production immediately upon LMU approval. Section 2(d)(2) of MLA provides that the LMU must be *mined* within a period not to exceed 40 years.

Therefore, DOI has determined that the 40-year mine-out period commences on the date that coal is first produced (mined). These comments were rejected.

Several comments were in favor of the rulemaking as proposed.

Executive Order 12291 Federal Regulation

The DOI has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291 because the existing regulatory scheme was found to be basically sound and required only streamlining to reflect changed conditions. The organization of the rules is revised to group similar provisions in general headings. The streamlining of application processing may result in a decrease in the ultimate cost for consumers and an increase in productivity of United States coal operations.

Regulatory Flexibility Act

The DOI has also determined that the rulemaking will not have a significant economic effect on a substantial number of small entities, and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The updating of 30 CFR Part 211 will have a minor beneficial economic effect on a substantial number of small entities. The reduction of the filing requirements for advance approval of routine operations will have a beneficial effect on a large number of coal operations. There are no adverse economic effects due to revision of the rules of this Part.

Paperwork Reduction Act

The information collection requirements contained in 30 CFR 211.62(d)(1) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1028–0001.

The information collection requirements contained in 30 CFR 211.4, .10, .11, .12, .22, .23, .62, .63, .72, .80, and .101 have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0042.

Environmental Effects

Based on the final environmental assessment prepared on both the final rulemaking for 43 CFR Part 3400 and 30 CFR Part 211, it is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 30 CFR Part 211

Administrative practice and procedure, Coal, Government contracts, Intergovernment relations, Mineral royalties, Mines, Public lands/mineral resources, Reporting requirements.

Under the authority of the Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181, et seq.), the Act of August 7, 1947 (30 U.S.C. 351, et seq.), 43 U.S.C. 2, and 43 U.S.C. 1201, Part 211, Chapter II, Title 30 of the Code of Federal Regulations is revised to read as set forth below.

Dated: July 13, 1982.

James G. Watt,

Secretary of the Interior.

PART 211—COAL EXPLORATION AND MINING OPERATIONS RULES

General Provisions

Sec.

Diligence Requirements

Performance Standards

Reports, Royalties, and Records

Inspection, Issuance of Orders, Enforcement, and Appeals

Logical Mining Units

Royalties

Authority: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 471, et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.); and the Freedom of Information Act (30 U.S.C. 552).

§ 211.1 Scope, purpose, and responsibilities.

(a) *Scope.* The rules of this Part shall govern operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (MLA), and in conjunction with the rules at 43 CFR Group 3400 and 30 CFR Chapter VII. Included are provisions relating to resource recovery and protection, royalties, diligent development, continued operation, maximum economic recovery (MER), and logical mining units (LMU's). Except as otherwise provided in 25 CFR Chapter I or Indian lands leases, these rules do not apply to operations on Indian lands. The provisions in these rules relating to advance royalty, diligent development, continued operation, MER, and LMU's shall not apply to Indian lands, leases and permits. The rules governing exploration licenses for unleased Federal coal are codified at 43 CFR Part 3410. Until final rulemaking is promulgated and implemented by the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the initial Federal lands Programs, the initial Federal lands Program rules codified at 30 CFR Part 211 (1981) shall remain in effect.

(b) *Purpose.* The purposes of the rules of this Part are to ensure orderly and efficient development, mining, preparation, and handling operations for Federal coal; ensure production practices that prevent wasting or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure MER of Federal coal; ensure that operations meet requirements for diligent development and continued operation; ensure resource recovery and protection plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure efficient, environmentally sound exploration and mining operations; and eliminate duplication of efforts by the Minerals Management Service (MMS), OSM, and the States in the Federal coal program.

(c) *Responsibilities of other Federal Agencies.*—(1) *Office of Surface Mining Reclamation and Enforcement.* The responsibility for administration of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201, et seq.) is vested in OSM.

(2) *Mine Safety and Health Administration.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 742), and the coal mine health and safety rules contained in Chapter I of this Title are vested in the Mine Safety and Health Administration, Department of Labor.

(3) *Bureau of Land Management.* The responsibility for the issuance of exploration licenses for unleased Federal coal, the issuance of licenses to mine, and the issuance, readjustment, modification, termination, cancellation, and/or approval of transfers of Federal coal leases pursuant to MLA, as amended, is vested in the Bureau of Land Management.

§ 211.2 Definitions.

(a) As used in the rules of this Part, the following terms shall have the following meanings:

(1) *Advance royalty* means a payment under a Federal lease in advance of actual production when authorized by the District Mining Supervisor to be made in lieu of continued operation. Payments made under the minimum production clause, in lieu of actual production from a Federal lease issued prior to 1977 and not readjusted after August 4, 1976, are not advance royalty under the provisions at 30 CFR 211.23.

(2) *Assistant Secretary for Energy and Minerals* means Assistant Secretary for Energy and Minerals, or designee, Department of the Interior (DOI).

(3) *Associate Director for Onshore Minerals Operations* means Associate Director for Onshore Minerals Operations, or designee, MMS, DOI.

(4) *Associate Director for Royalty Management* means Associate Director for Royalty Management, or designee, MMS, DOI.

(5) *Chief, Onshore Solid Minerals Division* means Chief, Onshore Solid Minerals Division, or designee, MMS, DOI.

(6) *Coal reserve base* shall be determined using existing published or unpublished information, or any combination thereof, and means the estimated tons of Federal coal in place contained in beds of:

(i) Metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation on the Federal lease.

(ii) Metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the Federal lease.

(iii) Any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest suface elevation on the Federal lease, which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time.

(iv) Any coal at a depth greater than 3,000 feet where mining actually is to occur.

(7) *Commercial quantities* means 1 percent of the recoverable coal reserves or LMU recoverable coal reserves.

(8) *Contiguous* means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common.

(9) *Continued operation* means the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

(10) *Continued operation year* means the 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with 30 CFR 211.22(b).

(11) *Deputy Minerals Manager for Mining* means Deputy Minerals Manager for Mining, or designee, MMS, DOI.

(12) *Development* means activities conducted by an operator/lessee, after approval of a permit application package, to prepare a mine for commercial production.

(13) *Diligent development* means the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period.

(14) *Diligent development period* means a 10-year period which:

(i) For Federal leases shall begin on either—

(A) The effective date of the Federal lease for all Federal leases issued after August 4, 1976; or

(B) The effective date of the first lease readjustment after August 4, 1976, for

Federal leases issued prior to August 4, 1976; and

(ii) For LMU's shall begin on either—

(A) The effective approval date of the LMU, if the LMU contains a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval; or

(B) The effective date of the most recent Federal lease issuance or readjustment prior to LMU approval, for any LMU that does not contain a lease issued prior to August 4, 1976, that has not been readjusted after August 4, 1976, prior to LMU approval.

The diligent development period shall terminate at the end of the royalty reporting period in which the production of recoverable coal reserves in commercial quantities was achieved, or at the end of 10 years, whichever occurs first.

(15) *Director* means Director, or designee, MMS, DOI.

(16) *District Mining Supervisor* means District Mining Supervisor, or designee, MMS, DOI.

(17) *Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal coal and its environment including the strata below the Federal coal, overburden, soil, and strata above the Federal coal, and the hydrologic conditions associated with the Federal coal.

(18) *Exploration plan* means a detailed plan to conduct exploration; it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(19) *General Mining Order* means any numbered formal order, issued by the Deputy Minerals Manager for Mining, which is published in the **Federal Register** after opportunity for public comment. General Mining Orders apply to coal exploration, mining, and related operations.

(20) *Gross value*, for the purpose of royalty calculations, means the unit sale or contract price times the number of units sold, subject to the provisions at 30 CFR 211.63 under which gross value is determined.

(21) *License* means a license to mine coal pursuant to the provisions of 43 CFR Part 3440, or an exploration license issued pursuant to the provisions of 43 CFR 3410.

(22) *Logical mining unit (LMU)* means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources. An LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal. All lands in an LMU shall be under the effective control of a single operator/lessee, be able to be developed and operated as a single operation, and be contiguous.

(23) *Logical mining unit (LMU) recoverable coal reserves* means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU.

(24) *Maximum economic recovery (MER)* means that, based on standard industry operating practices, all profitable portions of a leased Federal coal deposit must be mined. At the times of MER determinations, consideration will be given to: existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs; and compliance with applicable laws and regulations. The requirement of MER does not restrict the authority of the District Mining Supervisor to ensure the conservation of the recoverable coal reserves and other resources and to prevent the wasting of coal.

(25) *Methods of operation* means the methods and manner, described in an exploration or resource recovery and protection plan, by which exploration, development, or mining activities are to be performed by the operator/lessee.

(26) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

(27) *Minable reserve base* means that portion of the coal reserve base which is commercially minable and includes all coal that will be left, such as in pillars, fenders, or property barriers. Other areas where mining is not permissible (including, but not limited to, areas classified as unsuitable for coal mining operations) shall be excluded from the minable reserve base.

(28) *Minerals Management Service (MMS)* means the DOI Bureau created from the Conservation Division, U.S. Geological Survey, by Secretarial Order No. 3071, (January 19, 1982).

(29) *Minerals Manager* means the regional Minerals Manager, or designee, MMS, DOI.

(30) *MLA* means the Act of February 25, 1920, as amended, commonly referred to as the Mineral Leasing Act and codified at 30 U.S.C. 181, et seq., and the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351–359.

(31) *Notice of availability* means formal notification by the District Mining Supervisor to: appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public in accordance with 30 CFR 211.5.

(32) *Operator/lessee* means lessee, licensee, and/or one conducting operations on a Federal lease or license under a written contract or written agreement with the lessee or licensee.

(33) *Permanent abandonment of exploration operations* means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes, submission of required records, and reclamation of all disturbed surfaces.

(34) *Permanent abandonment of mining operations* means the completion of all development, production, and resource recovery and protection requirements conducted under an approved resource recovery and protection plan, including satisfaction of all Federal rental and royalty requirements.

(35) *Preparation* means any physical or chemical treatment to prepare coal for market. Treatment may include crushing, sizing, drying, mixing, or other processing, and removal of noncoal waste such as bone or other impurities to enhance the quality and therefore the value of the coal.

(36) *Production* means mining of recoverable coal reserves and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods.

(37) *Recoverable coal reserves* means the minable reserve base excluding all coal that will be left, such as in pillars, fenders, and property barriers.

(38) *Resource recovery and protection* includes practices to: recover efficiently the recoverable coal reserves subject to these rules; avoid wasting or loss of coal or other resources; prevent damage to or degradation of coal/bearing or mineral-bearing formations; ensure MER of the Federal coal; and ensure that other resources are protected during exploration, development, and mining, and upon abandonment.

(39) *Resource recovery and protection plan* means a plan showing that the proposed operation meets the requirements of MLA for development, production, resource recovery and

protection, diligent development, continued operation, MER, and the rules of this Part for the life-of-the-mine.

(40) *Royalty reporting period* means the period of time established by DOI for the calculation of production royalties due.

(41) *Secretary* means Secretary, or designee, DOI.

(42) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent settling or caving of strata lying above the mine.

(b) The following shall have the meanings as defined at 43 CFR 3400.0–5:

Authorized officer
Federal lands
Lease
Licensee

(c) The following shall have the meanings as defined at 30 CFR Chapter VII:

Alluvial valley floors
Federal Lands Program
Ground water
Indian lands
Overburden
Permit
Permit application
Permit application package
Permit area
Regulatory authority
Roads
Spoil

§ 211.2–1 Information collection.

The information collection requirements contained in 30 CFR 211 which require the filing of forms have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. The Coal Production and Royalty Report form in 30 CFR 211.62(d)(1), U.S. Geological Survey Form 9–373A, has been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0001.

The information is being collected for Federal royalty accounting purposes. The information will be used to permit accounting and auditing of royalties submitted by the operators/lessees of Federal coal leases. The obligation to respond is mandatory for all operators/lessees of Federal coal leases. For nonproducing Federal leases, the report is required on an annual basis. For producing Federal leases, the report is required monthly or quarterly as specified in the Federal lease.

The information collection requirements contained at 30 CFR 211.4 211.10, 211.11, 211.12, 211.22, 211.23, 211.62, 211.63, 211.72, 211.80, and 211.101 have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028–0042. The information may be collected from some operators/lessees to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with approvals already granted. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the Federal lease.

§ 211.3 General responsibilities.

(a) The MMS has the general responsibility to administer MLA with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, and to supervise exploration operations for Federal coal.

(b) Subject to the supervisory authority of the Secretary, the rules of this Part shall be administered by MMS through the Director; Associate Director for Onshore Minerals Operations; Associate Director for Royalty Management; Chief, Onshore Solid Minerals Division; Minerals Manager; Deputy Minerals Manager for Mining; and District Mining Supervisor.

(c) The District Mining Supervisor is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, product verification, and abandonment operations subject to the rules of this Part, and shall be responsible for the following:

(1) *Exploration plans.* Approve, disapprove, approve upon condition(s), or require modification to exploration plans for Federal coal.

(2) *Resource recovery and protection plans.* Recommend to the Assistant Secretary for Energy and Minerals the approval, disapproval, or approval upon condition(s) of resource recovery and protection plans.

(3) *LMU applications.* Approve, disapprove, or approve upon condition(s) LMU applications or modifications thereto; direct the establishment of LMU's in the interest of conservation of recoverable coal reserves and other resources; conduct public hearings on LMU applications, as appropriate, recommend amendments to Federal lease terms when determined necessary to ensure consistency with LMU stipulations; monitor and ensure compliance with LMU stipulations and the rules of this Part; and require reports and information for the establishment of an LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, federally leased or licensed lands where operations for exploration, development, production, preparation, and handling of coal are conducted or are to be conducted; inspect such operations for product verification, resource recovery and protection, MER, diligent development and continued operation; inspect such operations for the purpose of determining whether wasting or degradation of other resources or damage to formations and deposits or nonmineral resources affected by the operations is being avoided or minimized; and determine whether there is compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses, and all requirements of approved exploration or resource recovery and protection plans.

(5) *Compliance.* Require operators/lessees to conduct operations subject to the rules of this Part in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses under MLA requirements, and approved exploration or resource recovery and protection plans for requirements of production, development, resource recovery and protection, MER, diligent development and continued operation upon commencement of production.

(6) *Waiver, suspension, or reduction of rentals, or reduction of royalties.* Receive and act on applications for waiver, suspension, or reduction of rentals, and receive and act on applications for reduction of royalties, but not advance royalty, filed pursuant to the rules of this Part.

(7) *Extensions or suspensions.* Receive and act on applications for extensions or suspensions filed in accordance with 30 CFR 211.22 and, when appropriate, terminate extensions or suspensions that have been granted, provided that approval of an extension or a suspension shall not preclude the regulatory authority from requiring the operator/lessee to continue to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(8) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment or upon relinquishment of a Federal lease, in accordance with 43 CFR 3452.1–2, or Federal license, in accordance with 43 CFR 3410.3–1(d), the District Mining Supervisor shall conduct an inspection to determine whether the applicable exploration, development, production, resource recovery and protection, and abandonment requirements of the Federal lease or license have been met. Relinquishment or abandonment of a Federal lease shall

not preclude the regulatory authority from requiring the operator/lessee to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(9) *Exploration drill holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might occur as a result of any holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(10) *Trespass.* Report to the authorized officer, with a copy to the regulatory authority, any trespass on Federal lands that involves exploration activities or removal of unleased Federal coal, determine the quantity and quality of coal removed, and recommend the amount of trespass damages.

(11) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground water pollution control measures required by Federal statutes as implemented by the terms and conditions of applicable Federal leases, licenses or approved exploration plans, and promptly notify appropriate representatives of the regulatory authority and Federal Agencies in the event of any noncompliance.

(12) *Implementation of rules.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or ensure compliance with the rules of this Part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Lease bonds.* (i) Determine whether the total amount of Federal lease bond with respect to operations under the rules of this Part is adequate at all times to satisfy the reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to the rules of this Part is at all times adequate to satisfy the requirements of the Federal lease or license relating to exploration, development, production, resource recovery and protection, and shall determine if the bond amount is adequate to satisfy any payments of rentals on producing Federal leases and payments of Federal royalties.

(iii) Notify the authorized officer of determinations under (i) and (ii) above.

(d) The Associate Director for Royalty Management:

(1) Shall oversee all matters related to the collection of Federal rentals and royalties and obtain appropriate records, computations, and any audits of the royalty payments and obligations of the operators/lessees.

(2) Shall be responsible for obtaining copies of and auditing Federal coal production and sales records.

(3) Shall determine Federal rental liability of operators/lessees, on a Federal lease-by-lease basis, upon transfer of such responsibility from the Bureau of Land Management to MMS.

(4) Shall determine Federal royalty liability of operators/lessees.

(5) Shall collect and deposit Federal rental and royalty payments and maintain Federal rental and royalty accounts.

§ 211.4 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the performance standards of the rules of this Part, applicable requirements of 30 CFR 815.15 (OSM permanent performance standards for coal exploration) or an approved State program, any Federal lease or license terms and/or conditions, the requirements of the approved exploration plan, and orders issued by the District Mining Supervisor.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules of this Part, terms and conditions of the Federal leases or licenses, the approved resource recovery and protection plan, and any orders issued by the District Mining Supervisor.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production and shall adequately protect the recoverable coal reserves and other resources upon abandonment.

(d) The operator/lessee shall immediately report to the District Mining Supervisor any conditions or accidents causing severe injury or loss of life that could affect mining operations conducted under the resource recovery and protection plan or threaten significant loss of recoverable coal reserves or damage to the mine, the lands, or other resources, including, but not limited to, fires, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts, including corrective action initiated or recommended. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the rules of this Part shall be the District Mining Supervisor. All reports, plans, or other information required by the rules of this Part shall be submitted to the District Mining Supervisor. The principal point of contact for the operator/lessee regarding payments of Federal rentals and royalties shall be the Associate Director for Royalty Management.

(f) The operator/lessee shall provide the District Mining Supervisor or the Associate Director for Royalty Management free access to the Federal premises.

§ 211.5 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of the Minerals Manager, Deputy Minerals Manager for Mining, District Mining Supervisor and/or Associate Director for Royalty Managment shall be in writing; shall set forth with reasonable detail the facts and rationale upon which such decisions or determinations are based; and shall be available for public inspection, pursuant to 30 CFR 211.6, during normal business hours at the appropriate office.

(b) *Logical mining units (LMU's).*—(1) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereto submitted under 30 CFR 211.80, or a proposal by the District Mining Supervisor to establish an LMU, shall be available for public inspection, pursuant to 30 CFR 211.6, in the office of the District Mining Supervisor. A notice of the availability of any proposed LMU or modification thereto shall be prepared immediately by the District Mining Supervisor, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; appropriate State and Federal Agencies; and the clerk or other appropriate officer of the county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice shall be submitted by the District Mining Supervisor to a local newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively.

(2) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the District Mining Supervisor shall have the proposed decision published in a local newspaper of general circulation in the locality of the proposed LMU at least once a week for

2 weeks consecutively and shall not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability.

(3) *Public participation.* A public hearing shall be conducted upon the receipt by the District Mining Supervisor of a written request for a hearing from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU, provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed LMU. A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the District Mining Supervisor that held the hearing, and shall be furnished at cost to any interested party. In making any decision or taking any action subsequent to such public hearing, the District Mining Supervisor shall take into account all testimony presented at the public hearing.

§ 211.6 Confidentiality.

(a) Information on file with MMS obtained pursuant to the rules of this Part or 43 CFR 3400 shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal recoverable coal reserves obtained from exploration licensees under the rules of this Part or 43 CFR 3410 shall not be disclosed except as provided in 43 CFR 2.20(c).

(2) Information obtained from an operator/lessee under the rules of this Part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operator/lessee.

(3) Upon termination of a Federal lease, such geologic and geophysical data and maps shall be made available to the public.

(4) Upon issuance or readjustment of a Federal lease, the estimated Federal lease recoverable coal reserves figure shall not be made available to the public unless such a release has been included as a Federal lease term.

(b) Information requested by the operator/lessee to be kept confidential under this section shall be clearly marked "CONFIDENTIAL INFORMATION." All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection, except as stated at 30 CFR 211.6(a) for data submitted prior to August 30, 1982.

§§ 211.7–211.9 [Reserved]

§ 211.10 Exploration and resource recovery and protection plans.

(a) *Exploration plans.* For background and application procedures for exploration licenses for unleased Federal coal, see 43 CFR 3410. For background and application procedures for exploration for Federal coal within an approved permit area after mining operations have commenced, see 30 CFR Chapter VII. For any other exploration for Federal coal prior to commencement of mining operations, the following rules apply:

(1) Except for casual use, before conducting any exploration operations on federally leased or licensed lands, the operator/lessee shall submit an exploration plan to and obtain approval from the District Mining Supervisor. Casual use, as used in this paragraph, means activities which do not cause appreciable surface distrubance or damage to lands or other resources and improvements. Casual use does not include use of heavy equipment or explosives or vehicular movement off established roads and trails.

(2) The operator/lessee shall submit five copies of exploration plans to the District Mining Supervisor. Exploration plans shall be consistent with and responsive to the requirements of the Federal lease or license for the protection of recoverable coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(3) Exploration plans shall contain all of the following:

(i) The name, address, and telephone number of the applicant, and, if applicable, the operator/lessee of record.

(ii) The name, address, and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration.

(iii) A narrative description of the proposed exploration area, cross-referenced to the map required under 30 CFR 211.10(a)(2)(viii), including applicable Federal lease and license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archeological resources located within the proposed exploration area.

(iv) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to—

(A) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access route construction;

(B) Excavated earth- or debris-disposal activities;

(C) The proposed method for plugging drill holes;

(D) Estimated size and depth of drill holes, trenches, and test pits; and,

(E) Plans for transfer and modification of exploration drill holes to be used as surveillance, monitoring, or water wells.

(v) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation.

(vi) The estimated amounts of coal to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the coal removed.

(vii) A description of the measures to be used during exploration for Federal coal to comply with the performance standards for exploration (30 CFR 211.40(a)) and applicable requirements of 30 CFR 815.15 or an approved State program.

(viii) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable Federal lease and license boundaries; the location of land excavations to be conducted; coal exploratory holes to be drilled or altered; earth- or debris-

disposal areas; existing bodies of surface water; and topographic and drainage features.

(ix) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal coal is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(x) Such other data as may be required by the District Mining Supervisor.

(b) *Resource recovery and protection plans.* Before conducting any Federal coal development or mining operations on Federal leases or licenses, the operator/lessee shall submit and obtain approval of a resource recovery and protection plan, unless a current resource recovery and protection plan has been approved prior to August 30, 1982. If the resource recovery and protection plan is submitted solely to meet the MLA 3-year submittal requirement, the resource recovery and protection plan shall be submitted to the District Mining Supervisor. Upon receipt of a resource recovery and protection plan, the District Mining Supervisor will review such plan for completeness and for compliance with MLA. Prior to commencement of any coal development or mining operations on a Federal lease or license, a permit application package containing, among other documents, a resource recovery and protection plan and a permit application shall be submitted to the regulatory authority. On any Federal lease issued after August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the Federal lease. On any Federal lease issued prior to August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the first lease readjustment after August 4, 1976, or the effective date of the operator/lessee's election provided for at 30 CFR 211.20(b)(1), unless a current resource recovery and protection plan has been approved. Any resource recovery and protection plan submitted but not approved as of the effective date of these rules shall be revised to comply with these rules.

A resource recovery and protection plan for an LMU shall be submitted to the District Mining Supervisor as provided in 30 CFR 211.80(e)(1).

(c) The District Mining Supervisor may contact directly operators/lessees regarding MLA requirements. The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life-of-the-mine and, unless previously submitted in an LMU application or as directed by the District Mining Supervisor, shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered; names and addresses of operators/lessees; Federal lease serial numbers; Federal license serial numbers, if appropriate; and names and addresses of surface and subsurface coal or other mineral owners of record, if other than the United States.

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted.

(3) A description of the proposed mining operation, including:

(i) Sufficient coal analyses to determine the quality of the minable reserve base in terms including, but not limited to, Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content.

(ii) The methods of mining and/or variation of methods, basic mining equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, and number of acres to be affected.

(iii) An estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each Federal lease included in the resource recovery and protection plan. If the resource recovery and protection plan covers an LMU, recoverable coal reserves will also be reported for the non-Federal lands included in the resource recovery and protection plan.

(iv) The method of abandonment of operations proposed to protect the unmined recoverable coal reserves and other resources.

(4) Maps and cross sections, as follows:

(i) A plan map of the area to be mined showing the following—

(A) Federal lease boundaries and serial numbers;

(B) LMU boundaries, if applicable;

(C) Surface improvements, and surface ownership and boundaries;

(D) Coal outcrop showing dips and strikes; and,

(E) Locations of existing and abandoned surface and underground mines.

(ii) Isopach maps of each coal bed to be mined and the overburden and interburden.

(iii) Typical structure cross sections showing all coal contained in the coal reserve base.

(iv) General layout of proposed surface or strip mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location and width of coal fenders; and,

(C) Cross sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds.

(v) General layout of proposed underground mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location of shafts, slopes, main development entries and barrier pillars, panel development, bleeder entries, and permanent barrier pillars;

(C) Location of areas where pillars will be left and an explanation why these pillars will not be mined;

(D) A sketch of a typical entry system for main development and panel development entries showing centerline distances between entries and crosscuts;

(E) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by numbering such mining, the sequence of development and retreat; and,

(vi) For auger mining—

(A) A plan map showing the area to be auger mined and location of pillars to be left to allow access to deeper coal;

(B) A sketch showing details of operations including coal bed thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(5) A general reclamation schedule for the life-of-the-mine. This should not be construed as meaning duplication of a permit application in a permit application package under SMCRA. The resource recovery and protection plan may cross-reference, as appropriate, a permit application submitted under SMCRA to fulfill this requirement.

(6) Any required data which are clearly duplicated in other submittals to the regulatory authority or Mine Safety and Health Administration may be used to fulfill the requirements of the above paragraphs provided that the cross-reference is clearly stated. A copy of the

relevant portion of such submittals must be included in the resource recovery and protection plan.

(7) Explanation of how MER of the Federal coal will be achieved for the Federal coal leases included in the resource recovery and protection plan. If a coal bed, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

§ 211.11 Action on plans.

(a)(1) *Exploration plans.* The District Mining Supervisor after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the authorized officer, and with the regulatory authority when exploration is to be conducted within an approved permit area prior to commencement of mining operations, shall promptly approve or disapprove in writing an exploration plan. In approving an exploration plan, the District Mining Supervisor shall determine that the exploration plan complies with the rules of this Part, applicable requirements of 30 CFR 815.15 or an approved State program, and any Federal lease or license terms and/or conditions. Reclamation must be accomplished as set forth in the exploration plan. The District Mining Supervisor may impose additional conditions to conform to the rules of this Part. In disapproving an exploration plan, the District Mining Supervisor shall state what modifications, if any, are necessary to achieve such conformity. No exploration plan shall be approved unless the bond, executed pursuant to the provisions of 43 CFR 3474 or 43 CFR 3410, has been determined by the authorized officer to be adequate. When the land involved in the exploration plan is under the surface management jurisdiction of an agency other than DOI, that other agency must concur with the approval terms of the exploration plan.

(2) *Resource recovery and protection plans.* No resource recovery and protection plan or modification thereto shall be approved which is not in conformance with the rules of this Part, any Federal lease or license terms and/or conditions, and is not found to achieve MER of the Federal coal within an LMU or Federal lease issued or readjusted after August 4, 1976. The determination of MER shall be made by the District Mining Supervisor based on review of the resource recovery and protection plan. No resource recovery and protection plan shall be approved prior to the filing of a complete permit application package and unless the Federal lease bond, executed pursuant to the provisions of 43 CFR 3474 has been determined by the authorized officer to be adequate.

(3) *Recoverable coal reserve estimates.* For all Federal coal leases issued or readjusted after August 4, 1976, the recoverable coal reserves or LMU recoverable coal reserves shall be those estimated by the District Mining Supervisor as of the date of approval of the resource recovery and protection plan, or the date of approval of any existing mining plan as defined at 30 CFR 740.5 (1981). If an operator/lessee credits production toward diligent development in accordance with 30 CFR 211.24, such credits shall be included in the recoverable coal reserves or LMU recoverable coal reserves estimates. The estimate of recoverable coal reserves or LMU recoverable coal reserves may only be revised as new information becomes available. Estimates of recoverable coal reserves or LMU recoverable coal reserves shall not be reduced due to any production after the original estimate made by the District Mining Supervisor.

(b) *Changes in plans by District Mining Supervisor.* (1) Approved exploration plans may be required to be revised or supplemented at any time by the District Mining Supervisor, after consultation with the operator/lessee and the authorized officer as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The District Mining Supervisor, pursuant to MLA, may require approved resource recovery and protection plans to be revised or supplemented reasonably for modifications, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements. Such revisions shall be made in writing, as appropriate, and the District Mining Supervisor shall submit a copy to the regulatory authority.

(c) *Changes in plans by operator/lessee.* (1) The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the authorized officer and the regulatory authority as necessary, or specify conditions under which they would be acceptable.

(2) The operator/lessee may propose modifications to an approved resource recovery and protection plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the District Mining Supervisor. The District Mining Supervisor shall promptly approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable. Upon approval of modifications, the District Mining Supervisor shall submit a copy to the regulatory authority.

§ 211.12 Mining operations maps.

(a) *General requirements.* Upon commencement of mining operations, the operator/lessee shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the District Mining Supervisor. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of the mine or section shall be made by the operator/lessee and recorded on such maps. All excavations in each separate coal bed shall be shown in such a manner that the production of coal for any royalty reporting period can be accurately ascertained. Additionally, the maps shall show the name of the mine; name of the operator/lessee; Federal lease or license serial number(s); permit number; Federal lease and permit boundary lines; surface buildings; dip of the coal bed(s); true north; map scale; map explanation; location, diameter, and depth of auger holes; improvements; topography, including subsidence resulting from mining; geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, splits, unusual water occurrences, or other conditions that may influence MER; and other information that the District Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the District Mining Supervisor annually, or at such other times as the District Mining Supervisor requests. Copies of any maps, normally submitted to the regulatory authority, Mine Safety and Health Administration, or other State or Federal Agencies, that show all of the specific data required by this paragraph or 30 CFR 211.12 (b), (c), and (d) shall be acceptable in fulfilling these requirements.

(b) *Underground mine maps.* Underground mine maps, in addition to

the general requirements of 30 CFR 211.12(a), shall show all mine workings; the date of extension of the mine workings; an illustrative coal section at the face of each working unit; location of all surface mine fans; ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in, above, or below the active workings of the mine; areas affected by squeezes; elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in the roof at regular intervals in main entries, panels, or sections; and sump areas. Any maps submitted to the regulatory authority to be used to monitor subsidence shall also be submitted to the District Mining Supervisor.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of 30 CFR 211.12(a), shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved resource recovery and protection plan. Such maps shall show areas from which coal has been removed; the highwall; fenders; uncovered, but unmined, coal beds; and elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the District Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards acceptable to the District Mining Supervisor and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee fails to furnish a required or requested map within a reasonable time, the District Mining Supervisor, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator/lessee.

(g) *Incorrect maps.* If any map submitted by an operator/lessee is believed to be incorrect, and the operator/lessee cannot verify the map or supply a corrected map, the District Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the operator/lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator/lessee.

§§ 211.13–211.19 [Reserved]

§ 211.20 Diligent development and continued operation requirement.

(a) *General requirements.* (1) Except as provided at 30 CFR 211.20(b), each Federal coal lease and LMU is required to achieve diligent development.

(2) Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in 30 CFR 211.22.

(b) Federal coal leases issued prior to August 4, 1976, until the first readjustment of the lease after August 4, 1976, shall be subject to the Federal lease terms, including those that describe the minimum production requirement, except that:

(1) An operator/lessee holding such a lease may elect to be subject to the rules of this Part by notifying the District Mining Supervisor in writing within 1 year of the effective date of the rules of this Part.

(i) Such election shall consist of a written request, in triplicate, to the District Mining Supervisor that a Federal lease(s) be subject to the rules of this Part, and shall contain the following—

(A) Name and address of the operator/lessee of record.

(B) Federal lease number(s).

(C) Certified record of annual Federal coal production since August 4, 1976, for the Federal lease(s) that the operator/lessee requests to have credited toward diligent development in accordance with 30 CFR 211.24.

(ii) Upon verification by the District Mining Supervisor of the reported annual Federal coal production, the District Mining Supervisor shall notify the operator/lessee by certified mail, return receipt requested, that the election has been approved. The effective date of the election shall be the most recent royalty reporting period prior to the submittal of the election to the District Mining Supervisor.

(2) Upon the effective date of the first lease readjustment after August 4, 1976, all such Federal leases shall be subject to the rules of this Part.

(c) Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU in lieu of those diligent development and continued operation requirements that would apply to the Federal lease individually.

§ 211.21 Termination or cancellation for failure to meet diligent development and maintain continued operation.

(a) Any Federal coal lease or LMU which has not achieved diligent development shall be terminated by DOI.

(b) After an LMU has been terminated under the provision of 30 CFR 211.21(a), any Federal coal lease included in that LMU shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease by the rules of this Part, as if the Federal lease had not been included in the LMU.

(c) Any Federal coal lease on which continued operation is not maintained shall be subject to cancellation.

(d) The DOI may cancel any Federal coal lease or LMU which fails to meet the requirement for submission of a resource recovery and protection plan.

§ 211.22 Extension or suspension of continued operation, 3-year resource recovery and protection plan submission requirement, and operations and production.

(a) Applications for extensions or suspensions of continued operation or 3-year resource recovery and protection plan submittals shall be filed in triplicate in the office of the District Mining Supervisor. The District Mining Supervisor, if he determines the application to be in the public interest, is authorized to act on such applications, and to terminate extensions or suspensions which have been or may be granted.

(1) The requirement for continued operation shall be suspended and the date by which a resource recovery and protection plan must be submitted shall be extended by the period of time in which the District Mining Supervisor determines that operations under the Federal coal lease or LMU are interrupted by strikes, the elements, or casualties not attributable to the operator/lessee.

(2) The District Mining Supervisor may suspend the requirement for continued operation upon the payment of advance royalty in accordance with 30 CFR 211.23 for any operation. The District Mining Supervisor, upon notifying the operator/lessee 6 months in advance, may cease to accept advance royalty in lieu of the requirement for continued operation.

(b) In the interest of conservation, the District Mining Supervisor is authorized

to act on applications for suspension of operations and production filed pursuant to 30 CFR 211.22(b) direct suspension of operations and production, and terminate such suspensions which have been or may be granted. Applications by an operator/lessee for relief from any operations and production requirements of a Federal lease shall contain justification for the suspension and shall be filed in triplicate in the office of the District Mining Supervisor.

(1) A suspension in accordance with 30 CFR 211.22(b) shall take effect as of the time specified by the District Mining Supervisor. Any such suspension of a Federal coal lease or LMU approved by the District Mining Supervisor also suspends all other terms and conditions of the Federal coal lease or LMU, except the diligent development period, for the entire period of such a suspension. Rental and royalty payments will be suspended during the period of such suspension of all operations and production, beginning with the first day of the Federal lease month on which the suspension of operations and production becomes effective. Rental and royalty payments shall resume on the first day of the Federal lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty on producing Federal leases due under the Federal lease.

(2) The minimum annual production requirements shall be proportionately reduced for that portion of a Federal lease year for which suspension of operations and production is directed or granted by the District Mining Supervisor, in the interest of conservation of recoverable coal reserves and other resources, in accordance with 30 CFR 211.22(b).

(3) The term of any Federal lease shall be extended by adding to it any period of suspension in accordance with 30 CFR 211.22(b) of operations and production.

(4) A suspension in accordance with 30 CFR 211.22(b) does not suspend the permit and the operator/lessee's reclamation obligation under the permit.

§ 211.23 Payment of advance royalty in lieu of continued operation.

(a) Advance royalty may only be accepted in lieu of continued operation upon application to and approval by the District Mining Supervisor.

(b) However, any request by an operator/lessee for suspension of the continued operation requirement and payment of advance royalty in lieu thereof shall be made no later than 30 days after the beginning of the continued operation year. If an operator/lessee requests authorization to pay advance royalty in lieu of continued operation later than 30 days after the beginning of any continued operation year, the District Mining Supervisor may condition acceptance of advance royalty on the payment of a late payment charge on the amount of the advance royalty due. The late payment charge will be calculated in accordance with 30 CFR 211.102.

(c) For advance royalty purposes, the value of the Federal coal will be calculated in accordance with 30 CFR 211.63 and this section. When advance royalty is accepted in lieu of continued operation, it shall be paid in an amount equivalent to the production royalty that would be owed on the production of 1 percent of the recoverable coal reserves or the Federal LMU recoverable coal reserves. The advance royalty rate for an LMU shall be deemed to be 8 percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered by only underground maning operations and 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered only by other mining operations. For LMU's that contain Federal LMU recoverable coal reserves that would be recovered by a combination of underground and other mining methods, the advance royalty rate shall be deemed to be 12½ percent. The unit value of the recoverable coal reserves for determining the advance royalty payment for a Federal lease or LMU shall be:

(1) The unit value for production royalty purposes of coal produced and sold under the Federal coal lease or LMU during the immediately preceding production royalty payment period; or

(2) Computed at the average unit price at which coal from other Federal leases in the same region was sold during such period, if no coal was produced and sold under the Federal coal lease or LMU during the immediately preceding royalty payment period, or if the District Mining Supervisor finds that there is an insufficient number of such sales to determine such value equitably; or

(3) Determined by the District Mining Supervisor, if there were no sales of Federal coal from such region during such period or if the District Mining Supervisor finds that there is an insufficient number of such sales to determine such value equitably.

(d) The aggregate number of years during the period of any Federal coal lease or LMU for which advance royalty may be accepted in lieu of the requirement of continued operation shall not exceed 10. For Federal leases issued prior to August 4, 1976, advance royalty shall not be accepted in lieu of continued operation for more than a total of 10 years following the first lease readjustment after August 4, 1976.

Any continued operation year in which any advance royalty is paid shall be deemed a year in which advance royalty is accepted in lieu of continued operation for the purposes of this paragraph. However, if an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the Federal lease or LMU. The number of years for which advance royalty has been paid under any Federal coal lease prior to its inclusion in an LMU shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the LMU.

(e) The dollar amount of any production royalty for a Federal coal lease or LMU owed for any continued operation year during or subsequent to the continued operation year in which advance royalty is paid, shall be reduced (but not below zero) by the dollar amount of any advance royalty paid under that Federal lease or LMU to the extent that such advance royalty has not been used to reduce production royalty for a prior year.

(f) No advance royalty paid during the initial 20-year term of a Federal coal lease or LMU shall be used to reduce a production royalty pursuant to 30 CFR 211.23(e) after the 20th year of the Federal coal lease or LMU. For purposes of this paragraph, the initial 20-year term of a Federal lease shall commence on the effective date of the Federal lease for all Federal leases issued after August 4, 1976; on the effective date of the first lease readjustment after August 4, 1976, for all Federal leases issued prior to August 4, 1976; and on the effective date of LMU approval for all LMU's. Any advance royalty paid on a Federal lease prior to its inclusion in an LMU shall be credited to the LMU and shall be considered to have been paid on the date of LMU approval for the purposes of this paragraph, provided that the Federal lease has been included in an LMU within the initial 20-year term of the Federal lease as determined in this paragraph and to the extent that the advance royalty has not already been credited against production royalty on the Federal lease.

(g) If an operator/lessee fails to make an approved advance royalty payment in any continued operation year, the District Mining Supervisor shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement. If the operator/lessee then fails to comply with 30 CFR 211.102, the Federal lease or LMU shall be subject to cancellation pursuant to 30 CFR 211.21.

§ 211.24 Crediting of production toward diligent development.

(a) For Federal coal leases issued after August 4, 1976, all production after the effective date of the Federal lease shall be credited toward diligent development.

(b) For Federal coal leases issued prior to August 4, 1976, all production after the effective date of the first lease readjustment after August 4, 1976, shall be credited toward diligent development.

(c) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under 30 CFR 211.20 to be subject to the diligent development and continued operation requirements of the rules of this Part, all production after the effective date of the operator/lessee's election shall be applied toward diligent development.

(d) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under 30 CFR 211.20 to be subject to the diligent development and continued operation requirements of the rules of this Part, all production after August 4, 1976, that occurred prior to the effective date of the operator/lessee's election shall be applied toward diligent development if the operator/lessee so requests.

(e) For Federal coal leases issued prior to August 4, 1976, that have been readjusted after August 4, 1976, all production after August 4, 1976, that occurred prior to the effective date of the first lease readjustment after August 4, 1976, shall be applied toward diligent development if the operator/lessee so requests. Such a request shall comply with the election application provisions at 30 CFR 211.20(b)(1). Any production after such readjustment shall be applied toward diligent development pursuant to 30 CFR 211.24(b).

(f) For Federal coal leases issued prior to August 4, 1976, that are governed by the Federal lease clauses which describe the minimum production requirements until the first lease readjustment after August 4, 1976, no production prior to the effective date of that first Federal lease readjustment shall be applied toward diligent development.

(g) For LMU's, any production credited under the rules of this Part to a Federal lease prior to its inclusion in the LMU shall be applied toward diligent development for the LMU.

§ 211.25 Special logical mining unit rules.

(a) Production anywhere within the LMU, of either Federal or non-Federal recoverable coal reserves or a combination thereof, shall be applied toward satisfaction of the requirements of the rules of this Part for achievement of diligent development and continued operation for the LMU.

(b) The dates for submission of a resource recovery and protection plan and achievement of diligent development shall not be changed by any enlargement or diminution of the LMU.

§ 211.26–§ 211.39 [Reserved]

§ 211.40 Performance standards for exploration and surface and underground standards.

The following performance standards shall apply to exploration, development, production, resource recovery and protection, MER, and preparation and handling of coal under Federal leases and licenses, and LMU's.

(a) *Performance standards for exploration.* (1) The operator/lessee shall comply with the standards of the rules of this Part and with all applicable requirements of the surface management agency, 30 CFR 815.15, or an approved State program.

(2) The operator/lessee, if required by the District Mining Supervisor, shall set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources.

(3) All exploration drill holes must be capped with at least 5 feet of cement and plugged with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. For exploration holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material approved by the District Mining Supervisor, shall plug the hole through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the coal bed(s) or mineral deposit(s) and aquifers, or to the bottom of the drill hole. A lesser cap or plug may be approved by the District Mining Supervisor. Exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and ensure the safety of people, livestock, and wildlife.

(4) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the District Mining Supervisor, all drill and geophysical logs and shall make such logs available for inspection or analysis by the District Mining Supervisor, if requested. The District Mining Supervisor, at his discretion, may require the operator/lessee to retain representative samples of drill cores for 1 year. Confidentiality of such information will be accorded pursuant to the provisions at 30 CFR 211.6.

(5) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the District Mining Supervisor, in consultation with the regulatory authority. The operator/lessee may convert exploration drill holes to water wells only after approval of the operator/lessee's written request by the District Mining Supervisor and the surface owner or authorized officer, in consultation with the regulatory authority. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability including eventual plugging, reclamation, and abandonment. Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(b) *General performance standards for surface and underground mining.*— (1) *Maximum economic recovery (MER).* Upon approval of a resource recovery and protection plan for an LMU, or for a Federal lease issued or readjustment after August 4, 1976, the operator/lessee shall conduct operations to achieve MER of the Federal coal. To determine that MER of the Federal coal will be achieved, the District Mining Supervisor shall consider the information submitted by the operator/lessee under 30 CFR 211.10(c) and/or 30 CFR 211.80(c). The District Mining Supervisor may request additional information from the operator/lessee to aid in the MER determination. The operator/lessee shall consider coal preparation operations to avoid the wasting of coal and to encourage the achievement of MER. Federal leases issued prior to August 4, 1976, that have not yet been readjusted after August 4, 1976, shall comply with MLA regarding conservation of the

recoverable coal reserves and other resources.

(2) Diligent development, continued operation, advance royalty, and 3-year resource recovery and protection plan submission requirements are addressed at 30 CFR 211.20 through 30 CFR 211.25.

(3) *Unexpected wells.* The operator/lessee shall notify the District Mining Supervisor promptly if operations encounter unexpected wells or drill holes which could adversely affect the recovery of coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the District Mining Supervisor.

(4) *Resource recovery and protection.* The operator/lessee shall conduct efficient operations to recover the recoverable coal reserves; prevent wasting and conserve the recoverable coal reserves and other resources; prevent damage or degradation to coal-bearing or mineral-bearing formations; and ensure that other resources are protected upon abandonment.

(5) *Release of lease bond.* Subsequent to permanent abandonment of mining operations, the District Mining Supervisor will determine if the operator/lessee has met obligations required under the Federal lease for resource recovery and protection, and will determine if the operator/lessee has met the Federal lease requirements pertaining to rentals and royalties. The District Mining Supervisor will make appropriate recommendations to the authorized officer for reduction or termination of the Federal lease bond.

(c) *Performance standards for underground mines*—(1) *Underground resource recovery.* Underground mining operations shall be conducted so as to prevent wasting of coal and to conserve recoverable coal reserves consistent with the protection and use of other resources. No entry, room, or panel workings in which the pillars have not been completely mined within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the District Mining Supervisor.

(2) *Subsidence.* The operator/lessee shall adopt mining methods which ensure proper recovery of recoverable coal reserves under MLA, as determined by the District Mining Supervisor. Operators/lessees of underground coal mines shall adopt measures consistent with known technology in order to prevent or, where the mining method used requires subsidence, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 784.20 and 30 CFR 817.121, 817.122, 817.124, and 817.126, or applicable requirements of an approved State program. Where pillars are not removed and controlled subsidence is not part of the resource recovery and protection plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and the strata above and immediately below the coal beds.

(3) *Top coal.* Top coal may be left in underground mines only upon approval by the District Mining Supervisor. The determination of mining height in thick coal beds will take into consideration safety factors, available equipment, overall coal bed thickness, and MER. The bottom coal left, if determined by the District Mining Supervisor to be of a minable thickness, should be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow.

(4) *Multiple coal bed mining.* (i) In general, the recoverable coal reserves in the upper coal beds shall be mined before the lower coal beds; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The District Mining Supervisor may authorize mining of any lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted to the District Mining Supervisor by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) In areas subject to multiple coal bed mining, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved in advance by the District Mining Supervisor.

(5) The District Mining Supervisor shall approve the conditions under which an underground mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this Part.

(6) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the District Mining Supervisor, mine any recoverable coal reserves or drive any underground workings within 50 feet of any of the outside boundary lines of the federally leased or licensed land, or within such greater distance of said boundary lines as the District Mining Supervisor may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee may be required to pay for unauthorized mining of barrier pillars. The District Mining Supervisor may require that payment shall be up to, and include, the full value of the recoverable coal reserves mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the District Mining Supervisor.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the mining of the coal remaining in the Federal barrier pillars which otherwise may be lost. If the water level beyond the pillar is below the operator/lessee's adjacent operations, and all the safety factors have been considered, the operator/lessee, on the written order of the District Mining Supervisor, shall mine out and remove all available Federal recoverable coal reserves in such barrier if it can be mined without undue hardship to the operator/lessee; with due consideration for safety; and pursuant to existing mining, reclamation, and environmental laws and rules. Either the operator/lessee or the District Mining Supervisor may initiate the proposal to mine coal in a barrier pillar.

(7) The abandonment of a mining area shall require the approval of the District Mining Supervisor.

(d) *Performance standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit will be minimized consistent with individual mine economics and the coal quality standards that must be maintained by the operation.

(3) The abandonment of a mining area shall require the approval of the District Mining Supervisor.

(4) If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(5) The District Mining Supervisor shall approve the conditions under which a surface mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this Part.

(6) *Barrier or boundary coal.* The operator/lessee shall be encouraged by the District Mining Supervisor, in the interest of conservation of recoverable coal reserves and other resources, to mine coal up to the Federal lease or license boundary line; provided that, the mining is in compliance with existing

State and Federal mining, environmental and reclamation laws and rules, the mining does not conflict with existing surface rights, and the mining is carried out without undue hardship to the operator/lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the District Mining Supervisor shall take into account the percentage of recovery, which in general shall exceed 30 percent, and the probable effect on recovering the remaining adjacent recoverable coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined recoverable coal reserves. Where auger mining is authorized, the District Mining Supervisor will require a sufficient number and size of pillars at regular intervals along the highwall or outcrop to ensure access to the unmined recoverable coal reserves.

(2) A plan for recovery of recoverable coal reserves by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the rules of this Part, and 30 CFR Chapter VII or applicable requirements of an approved State program.

§ 211.41 Completion of operations and permanent abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas, mineral resources, or ground water. Areas disturbed by exploration operations will be graded, drained, and revegetated.

(b) Upon permanent abandonment of mining operations, the District Mining Supervisor will require that the unmined recoverable coal reserves and other resources be adequately protected. Upon completion of abandonment, the District Mining Supervisor will inform the authorized officer and regulatory authority as to whether the abandonment has been completed in compliance with the rules of this Part.

§ 211.42–§ 211.61 [Reserved]

§ 211.62 Reports.

(a) *Exploration reports.* The operator/lessee shall file with the District Mining Supervisor the information required in 30 CFR 211.62(b). Such filing shall be within 30 days after the end of each calendar year and promptly upon completion or suspension of exploration operations, unless otherwise provided in the exploration license or Federal lease, and at such other times as the District Mining Supervisor may request.

(b) *Exploration report content.* The exploration report shall contain the following information:

(1) Location(s) and serial number(s) of the federally leased or licensed lands.

(2) Nature of exploration operations.

(3) Number of holes drilled and/or other work performed during the year or report period.

(4) Total footage drilled during the year or other period as determined by the District Mining Supervisor.

(5) Map showing all holes drilled, other excavations, and the coal outcrop lines.

(6) Analyses of coal and other pertinent tests obtained from exploration operations during the year.

(7) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(8) Status of reclamation of the disturbed areas.

(9) A statement on availability and location of all drill hole logs and representative drill cores retained by the operator/lessee pursuant to 30 CFR 211.40(a).

(10) Any other information requested by the District Mining Supervisor.

(c) Any coal reserve base, minable reserve base or recoverable coal reserves estimates generated from an exploration license shall be submitted to the District Mining Supervisor within 1 year after completion of drilling operations.

(d) *Production reports and payments.* (1) Operators/lessees shall report on USGS Form 9–373A, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing Federal royalty and any other form requirements, and shall make all payments due. Acceptance of the report and payment shall not be construed as an accord and satisfaction on the operator/lessee's Federal royalty obligation.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(3) Non-Federal LMU production shall be reported in accordance with 30 CFR 211.80(h)(1).

(e) *Penalty.* If an operator/lessee knowingly records or reports less than the true weight or value of coal mined, the District Mining Supervisor shall impose a penalty equal to either double the amount of Federal royalty due on the shortage or the full value, as determined in 30 CFR 211.63, of the shortage. If, after notice, an operator/lessee or licensee maintains false records or files false reports, the District Mining Supervisor may recommend to the authorized officer that action be initiated to cancel the Federal lease or license, in addition to the imposition of any penalties.

(f) *Confidentiality.* Confidentiality of any information required under this section shall be determined in accordance with 30 CFR 211.6.

§ 211.63 Royalties.

(a) Provisions for the payment of advance royalty in lieu of continued operation are contained at 30 CFR 211.23.

(b) An overriding royalty interest, production payment, or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in the Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows that he has made substantial investments for improvements directly related to exploration, development, and mining on the land covered by the transfer that would justify a higher payment.

(c)(1) The District Mining Supervisor may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal royalty, but not advance royalty, on a Federal lease or portion thereof. The District Mining Supervisor shall take such action for the purpose of encouraging the greatest ultimate recovery of Federal coal, and in the interest of conservation of Federal coal and other resources, whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms. In no case shall the District Mining Supervisor

reduce to zero any royalty on a producing Federal lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the District Mining Supervisor. The application shall contain the serial number of the Federal lease, the Bureau of Land Management State Office, the name and address of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and existing Federal rental and royalty rates on Federal leases covered by the application.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the Federal lease or why the reduction is necessary to promote development. Where the application is for a reduction in Federal royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the Federal lease included in the application is not part of nor adjoining an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the District Mining Supervisor has deemed to have similar operating characteristics.

(iii) The applicant shall also file a copy of agreements, between the operator/lessee and the holders of any royalty interests or production payments other than those created in order to finance a mine, to a reduction of all other royalties from the Federal lease so that the total royalties and production payments owed the holders of these interests will not be in excess of one-half of the Federal royalties, should the Federal royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this Part, the District Mining Supervisor shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this Part, the District Mining Supervisor shall act on the application.

(d) Operators/lessees shall submit Federal royalty payments as provided for in the Federal lease. The payment shall be made within 30 days after the end of the royalty reporting period for which the royalty accrued.

(e) Where Federal royalty is calculated on a cents-per-ton basis, it shall be based on the actual weight of coal and shall accrue on the sale or use of the coal. In addition, where coal placed in inventory exceeds that which the District Mining Supervisor determines to be required for normal mining and processing operations, the Federal royalty shall also be paid on that excess estimated tonnage in inventory.

(f) Where Federal royalty is calculated on a percentage basis, the value of coal for Federal royalty purposes shall be the gross value at the point of sale, normally the mine, except as provided at 30 CFR 211.63(h). For captive operations or other than arms-length transactions, the District Mining Supervisor shall determine gross value and the point of sale.

(g) The gross value shall be the unit sale or contract price times the number of units sold, unless MMS determines that:

(1) A contract of sale or other business arrangement between the operator/lessee and a purchaser of some or all of the coal produced from the Federal lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or,

(2) No consideration is received from some or all of such coal because the operator/lessee is consuming such coal or adding it to inventories, and for which Federal royalty is due and payable.

In either case, MMS shall determine the gross value of such coal taking into account:

(i) Any consideration received or paid by the operator/lessee in other related transactions.

(ii) The average price paid for coal of like quality produced from the same general area during the Federal lease month.

(iii) Contracts or other business arrangements, between coal producers and purchasers for the sale of coal other than coal produced under such Federal lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Mining cost plus reasonable profit margin.

(v) Prices reported to a public utility commission and/or the Federal Energy Regulatory Commission.

(vi) Such other relevant factors as the District Mining Supervisor may deem appropriate.

(h) If additional preparation of the coal is performed prior to sale, such costs shall be deducted from the gross value in determining value for Federal royalty purposes. The District Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the operator/lessee provides an accurate account of the costs incurred. However, the following shall not be deducted from the gross value in determining value for Federal royalty purposes: costs of primary crushing, storing, and loading; treatment with chemicals to prevent freeezing; treatment with oil to suppress dust in transit; and, other preparation of the coal which in the judgment of the District Mining Supervisor does not enhance the quality of the coal.

(i) If a Federal coal lease that provides for a percentage Federal royalty is developed by *in situ* technology, the gross value of production for the purpose of computing royalty shall be determined by MMS.

(j) If a Federal coal lease that provides for a cents-per-ton Federal royalty is developed by *in situ* technology, MMS will establish a procedure for estimating tonnage for royalty purposes.

(k) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the operator/lessee shall pay Federal royalty at a rate specified in the Federal lease at the time of recovery. The operator/lessee shall make payment based on the Federal share of the coal when the coal is recovered regardless of whether it is stored on Federal lands. Where such waste containing coal from a Federal lease is mixed with similar waste from private lands, the operator/lessee shall maintain accurate records from which Federal ownership of coal in the waste may be determined. However, nothing in this section requires payment of a Federal royalty on Federal coal for which a Federal royalty has already been paid.

§ 211.64–§ 211.65 [Reserved]

§ 211.66 Maintenance of and access to records.

(a) Operators/lessees shall maintain current and accurate records for the Federal lease or LMU showing:

(1) The type, quality, and weight of all coal mined, sold, used on the premises,

or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The District Mining Supervisor and the Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance with Federal lease terms relating to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all coal mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the District Mining Supervisor and the Associate Director for Royalty Management in accordance with current MMS rules and procedures.

§ 211.67–§ 211.69 [Reserved]

§ 211.70 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved exploration plan for:

(1) Abandonment.

(2) Environmental protection and reclamation practices.

(b) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor or the Associate Director for Royalty Management for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the District Mining Supervisor in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the District Mining Supervisor shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 211.72 Enforcement.

(a) If the District Mining Supervisor determines that an operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this Part, the District Mining Supervisor shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the District Mining Supervisor shall be grounds for cessation of operations upon notice by the District Mining Supervisor. The District Mining Supervisor may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the District Mining Supervisor, an operator/lessee is conducting activities which fail to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of aproved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the District Mining Supervisor shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the District Mining Supervisor when such noncompliance has been corrected. Upon concurrence by the District Mining Supervisor that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the District Mining Supervisor shall so notify the operator/lessee in writing.

(e) The District Mining Supervisor shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 30 CFR 843.12.

§ 211.73 Appeals.

Decisions or orders issued by MMS under 30 CFR 211 may be appealed pursuant to 30 CFR Part 290, except that decisions or orders issued by the District Mining Supervisor under 30 CFR 211.72(e) are subject to appeal pursuant to 43 CFR Part 4.

§ 211.74–§ 211.79 [Reserved]

§ 211.80 Logical mining units.

(a) *General.* An LMU shall become effective only upon approval by the District Mining Supervisor. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with 30 CFR 211.80(g). An LMU may be diminished by creation of other separate Federal leases or LMU's, in accordance with 30 CFR 211.80(g).

(b) The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing

Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this Part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to 30 CFR 211.80(e).

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the District Mining Supervisor if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the District Mining Supervisor in accordance with 30 CFR 211.80(b). Such application shall include the following:

(1) Name and address of the designated operator/lessee of the LMU.

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(4) Sufficient data to enable the District Mining Supervisor to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

(5) Any other information required by the District Mining Supervisor.

(6) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with 30 CFR 211.6.

(d) *Consultation.* (1) Prior to approval, the District Mining Supervisor shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The District Mining Supervisor shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of 30 CFR 211.5 shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the District Mining Supervisor shall notify the operator/lessee and authorized officer of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by 30 CFR 211.10(c) for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this Part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with 30 CFR 211.23.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first produced from the LMU, after LMU approval, as determined during the first royalty reporting period following such date.

(7) Any other condition that the District Mining Supervisor determines to be necessary for the efficient and orderly operation of the LMU.

(f) *Criteria for approving the establishment of an LMU.* The District Mining Supervisor shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) Mining operations on the LMU will achieve MER of Federal recoverable coal reserves within the LMU. A single operation may include a series of excavations.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The District Mining Supervisor will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the District Mining Supervisor for approval of the LMU.

(5) The LMU does not exceed 25,000 acres, including both Federal and non-Federal lands.

(g) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the District Mining Supervisor after consultation with the authorized officer, or by direction of the District Mining Supervisor after consultation with the authorized officer. In accordance with 30 CFR 211.11(a)(3), the District Mining Supervisor may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR 3452.

(3) In considering an application for the modification of an LMU, the District Mining Supervisor shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) Pursuant to 30 CFR 211.80(e), the 40-year mine-out period for an LMU shall not be extended as the result of the enlargement of an LMU or as the result

of the revision or amendment of a resource recovery and protection plan.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the District Mining Supervisor. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at 30 CFR 211.20 through 30 CFR 211.25.

(3) Operators/lessees must comply with the LMU stipulations.

§ 211.81–§ 211.99 [Reserved]

§ 211.100 [Reserved]

§ 211.101 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Royalty Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Royalty Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Royalty Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that a lessee/operator/payor is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

§ 211.103–§ 211.999 [Reserved]

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Part VII

Environmental Protection Agency

Asbestos Reporting Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-84004B; TSH-FRL 2124-4]

Asbestos Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule, under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), requires reporting to EPA by asbestos manufacturers, importers, and processors. The information sought includes data on the quantities of asbestos used in making products, employee exposure data, and waste disposal and pollution control equipment data. Reported information will be utilized by EPA and other Federal agencies in considering the regulation of asbestos.

DATE: This regulation becomes effective on August 30, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C: (554-1404). Outside the USA: (Operator-202-544-1404).

SUPPLEMENTARY INFORMATION:

OMB Control Number: (2000-0478).

I. Introduction

EPA proposed a rule in the **Federal Register** of January 26, 1981 (46 FR 8200) under section 8(a) of the Toxic Substances Control Act (TSCA), to obtain information on industrial and commercial uses of asbestos. The Agency received 80 written comments on the proposal and held one public meeting. This preamble explains the provisions and procedures of the final rule and the changes EPA has made to reduce the burden of the rule.

The basic design of the rule remains unchanged; it divides the asbestos industry into two groups for reporting purposes. EPA will require detailed information on EPA Form 7710-36, "Reporting Commercial and Industrial Uses of Asbestos," from the first group—persons who mine, mill, or import bulk asbestos, or process it to form an asbestos mixture or product, such as asbestos paper. The latter persons are called "primary processors of asbestos." This first group must report within 90 days of the effective date of this rule.

EPA will require reporting in two phases for the second group—secondary processors of asbestos (secondary processors of asbestos make products from asbestos mixtures, not bulk asbestos), and persons who import asbestos mixtures or other products that contain asbestos. In the first phase, companies will have 60 days from the effective date of the rule to identify themselves and the asbestos mixtures they process or import on EPA Form 7710-37, "Reporting Secondary Processing and Importation of Asbestos Mixtures." EPA will then select a sample of respondents from this identification phase to complete the detailed EPA Form 7710-36 in the second phase of reporting for this group.

After considering the substantive comments to the proposed rule, the Agency has changed several provisions of the proposed rule to reduce the burden on repondents without significantly decreasing the value of the information that this rule will collect. The two primary changes from the proposal are (1) respondents must submit data from only 3 years on EPA Form 7710-36 and (2) the recordkeeping requirements for customer lists and monitoring data are eliminated. A full discussion of the substantive comments and EPA's responses to those comments can be found in a document entitled "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule" which is part of the public record for this rule and is incorporated into this document.

II. Purpose of the Rule

This rule will obtain current information about major aspects of asbestos manufacturing, processing, and importation to support the Agency's asbestos risk investigation. Under TSCA, EPA is examining the costs and the benefits to society from all applications of asbestos in order to decide, within a range of potential options, what actions may be necessary to adequately protect the public health. The investigation is considering the various Federal authorities now regulating different aspects of asbestos exposures, to examine the effectiveness of current regulatory activities. In addition to providing data for the TSCA investigation, this information rule will support decisions on a number of potential Federal actions by providing a total picture of the current situation that will help focus further activities in the most appropriate manner.

Information obtained by this rule, along with already available data, will be used to describe the exposures and economics of asbestos use to the extent needed for determining the cost and effectiveness of potential risk-reduction steps. The Agency will consider this reported information in calculating the extent of exposure from asbestos and in determining where the exposures present an unreasonable risk. The Agency cannot now adequately determine what asbestos-containing products are currently made and who makes them. While there are over 3,000 existing patents for applications of asbestos, there is no information on which ones have been used commercially. For example, persons who commented on the proposed reporting rule identified some products which the Agency had previously not identified as containing asbestos. Individual reports which identify firms, production sites, and asbestos products will provide an inventory of asbestos use that is not presently available.

The regulatory investigation now underway is examining the separate and cumulative exposures to all types of populations that occur during production, manufacturing, use, and disposal of asbestos products. Concurrently, EPA scientists are developing a health risk assessment to use in quantitatively predicting adverse health effects resulting from exposure to asbestos. Information from this rule will permit the Agency to attribute accurately the risk in specific industries or from specific products to a portion of the overall cumulative risk. The Agency will use the data to identify areas where exposure levels should be reduced. The reports will also identify industries and products that require no further consideration.

The Agency is assessing all available information and conducting factual discussions with industry. The information collected through this rule will offer a neutral basis from which the Agency can establish agreements, as appropriate, for industry to take voluntary steps to reduce the levels of risk. The Agency will encourage industry to adopt voluntary actions to control exposure levels.

EPA expects to initiate regulatory proceedings to control exposures in cases where non-regulatory actions are not appropriate. The Agency will examine the various Federal statutes to find the most appropriate authority to effect the necessary control. If TSCA provides the proper authority, the Agency may take actions to control specific uses of asbestos which involve risks that are found to be "unreasonable" within the meaning of section 6 of TSCA. The Agency may

determine that labelling of products would sufficiently reduce the risk.

If the Agency determines that regulatory measures are warranted under the authority of section 6 of TSCA, the Agency will use information from this rule to support regulatory impact analyses required under Executive Order 12291. A complete data base will allow the Agency to choose and document better the most cost-effective regulatory approach. The Agency will consider all relevant information that it can reasonably obtain from the current manufacturers and processors who would be most affected by regulations.

A. Need for the Data

This reporting is being required because adequate data are not otherwise available for the present investigation to determine where unreasonable risks from asbestos exist and the appropriate approaches to reduce those risks. Information that is currently available to the Agency is sufficient as the basis for qualitative generalizations about both the value of using asbestos in its various application and the risks from those activities. Yet, the Agency has no set of information that it can reference in quantifying either the risk from or the value of the various products and product subcategories. Before drawing any final conclusions about asbestos, the Agency needs a data base that it can use to characterize the current situation with a greater degree of accuracy.

EPA has examined all information presently available to Federal agencies and solicited information from industry prior to the issuance of this rule. Agency personnel and contractors reviewed the extensive literature concerning asbestos; obtained information from other Federal agencies; and developed new data and made site visits when possible. The search for information is described in an internal EPA document entitled, "Technical Information Summary" (TIS), which is part of the public record for this rule. The TIS summarizes the various sources of available information both in published literature and from Federal agencies, and it evaluates the usefulness of the information to the Agency. Additionally, the TIS describes efforts by EPA contractors to conduct necessary analyses and the problems they have encountered.

Briefly, the "Technical Information Summary" contains the following conclusions about Government and industry documents that are available: While information is available generally to characterize the industries that make products from bulk asbestos, very little data exist on secondary processors. Further, all of the information that is available is inadequate in several respects. The basic data source of asbestos consumption patterns is from the Bureau of Mines. Many of the documents concerning industrial and commercial uses of asbestos cite the Bureau of Mines data. However, the data used by the Bureau of Mines to determine asbestos consumption are from an annual voluntary survey of only a portion of asbestos processors and, for instance, do not count 40 percent of the bulk asbestos we know is imported. The Bureau of Mines estimates that the asbestos consumption figures are accurate only to ±50 percent. EPA expects to attain a higher degree of accuracy because virtually all of the processing of bulk asbestos will be reported under this rule and this production will be reported according to well-defined categories of both companies and products. In addition, EPA will be able to characterize all industry segments with greater confidence from data obtained in the representative survey. Agency contractors who have developed the preliminary analyses for the asbestos investigation participated in the design of these information requirements to ensure that any gaps and shortcomings of existing information will be corrected to the extent possible.

Available information provides general characteristics of the industries which make and process asbestos products. However, the information is already in an aggregated form and discrete components cannot be separated from the totals. For instance, at this time the Agency cannot characterize many products because data about the asbestos products are mixed in aggregates with data about similar, non-asbestos products. The underlying data of the aggregates, which are needed for the Agency analyses, are not available in most cases. For example, the Bureau of the Census is precluded under Title 13, U.S. Code, from disclosing individual reports it receives. Further, the information is too superficial to analyze separately subcategories of products. In some areas, as is the case for most secondary processors, existing information is too sparse to enable the Agency to make any but the most general estimates.

The lack of detail in available information means that the Agency is not able to analyze the effects that regulatory or voluntary actions on a single product may have on a multi-product industry and to quantify expected reductions in risk. This rule will characterize activities at the plant-site level, which will permit the Agency to analyze how specific actions would affect various elements of the analyses.

Most of the existing information consists of estimates that are based on data which may not reflect the current situation because the data were gathered many years ago. The most comprehensive information available covers the years 1975–1976, and it was generated to support and respond to OSHA's proposal in 1975 to lower the asbestos workplace standard. Present information indicates that significant changes have occurred. For instance, the U.S. Bureau of Mines reports that apparent consumption in the United States of raw asbestos fiber declined 36 percent in 1980, with a drop in consumption from 658,847 short tons in 1976 to 358,703 short tons in 1980. Changes have also occurred in the number of employees and the patterns of asbestos use. Information gathered through this rule will ensure a representative picture of the present situation and it will update or verify where possible data that already exist.

The TIS reviews EPA's search for information within EPA and from other Federal agencies. Data have been acquired from the EPA Compliance Data System Asbestos National Emission Standard For Hazardous Air Pollutants (NESHAP) file, inspection data from both the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA), reports from CPSC's General Order (see the following paragraphs), and importer data from the U.S. Customs Service. The Agency has acquired and evaluated information from these agencies, and concluded that these data do not adequately substitute for the information to be gathered by this rule.

A significant source of information on exposure levels in industry is the Occupational Safety and Health Administration (OSHA), which has performed workplace inspections since it promulgated the workplace exposure level standard in 1972. OSHA records contain a great deal of anecdotal information but, for the following reasons, few generalizations can be drawn about industry-wide exposure levels or the number of workers that are exposed. Because OSHA does not uniformly inspect all industries, it is difficult to make statistically valid extrapolations for all of industry. Moreover, approximately 80 percent of OSHA's inspections are in response to complaints, and cannot be extrapolated to make industry-wide estimates.

Inspections responding to complaints generally examine only the work area of concern to the complainant and, therefore, the data generally do not represent the facility-wide exposure situation. Finally, reports are available on industries in only 34 states, because the other states have been authorized by OSHA to conduct their own inspections.

The Consumer Product Safety Commission (CPSC) required the manufacturers of specified consumer products to submit certain information about how asbestos is used in those products under a General Order on December 22, 1980 (45 FR 84384). The Agency is examining the submitted data where respondents did not object to CPSC's sharing the reports with EPA. This rule contains a provision whereby companies need not report the same information to EPA if it was already reported to CPSC without objection to CPSC's sharing the data. However, the data from this General Order does not fully substitute for this rule because the Agency is interested in subjects beyond what CPSC asked, such as employee exposure and plant-site emissions.

Agency contractors have encountered a great deal of difficulty in performing their assessments with information that is available. A principal problem is that aggregate information about broad product categories is all that is available. This shortcoming in available data is significant because the contractors have found large variations in the ways companies process asbestos, control emissions, and dispose of wastes. Their draft reports contain many generalities and qualify many findings by citing the unreliability of available data or the absence of certain types of data. The contractors have individually attempted to gather additional data from industry, but have found that companies are reluctant to disclose confidential business information. Agency staff have intervened by officially requesting needed information; however, very little data has been submitted as a result.

B. Uses of Collected Information

The section 8(a) data will be used for analyses in the TSCA regulatory investigation and will be useful to other EPA offices and other Federal agencies. In preparation for obtaining these data, the Agency has developed plans to automate the information in a manner that will maximize the utility of the information to the Agency, other Federal agencies, and the public. A full description of how the Agency plans to use the reported data including computer-generated data outputs, can be found in the Information Use Plan that is part of the public record for this rule.

In the TSCA investigation, the Agency will use the information both to describe the current situation and to forecast changes either in the absence of additional regulation or as a result of new actions. Analyses will be conducted on several levels: industry-wide; by product category; and product subcategory. The Agency will use reported data to prepare exposure assessments, analyses of control options, and, if necessary, regulatory impact analyses.

The first analysis of the reported data will be the exposure assessment, where the operational objective is the development of sufficient data to determine cumulative human exposures. For the exposure assessment, the rule will identify the primary processor manufacturing sources, counting both workplace exposures (numbers of workers according to their general category of work and their exposure levels by product line) and the exposures to populations living around the plant-site (environmental releases from pollution control equipment and from uncontrolled vents). The size of the exposed general population and associated exposure levels will be computed using recognized techniques to analyze environmental pathways and monitoring data that provide the basis for modeling. In a sample survey, the Agency will learn how asbestos mixtures are used by secondary processors, who will provide facts that characterize exposure levels for their operations, the size of their workforce, and exposures to the general population. Primary and secondary processors will report the kinds and quantities of asbestos-containing waste they generate, which will permit analysis of possible fiber release into the atmosphere from waste sites. Importers will report the types of asbestos-containing materials that currently enter the U.S. customs territory. The Agency will relate production reports by secondary processors and importers with existing data to estimate the kinds of populations that may be exposed during the installation, use, removal, and disposal of the end-product.

This exposure assessment will be performed for each asbestos product category, and in most cases the Agency will assess exposures from product subcategories. The exposure factors will be used as input to appropriate dose-response studies to establish a risk factor that describes the estimated number of premature deaths to all populations as a result of the asbestos activity that is assessed. In the case of asbestos, the number of premature deaths and related health care costs are the primary societal costs that can be quantified. The assessments for each category will be considered as a whole, both to determine the overall extent of risk presented by asbestos and to attribute to each category or subcategory their portion of the total risk. As already stated, the Agency will concentrate its further efforts on products that appear to pose the greatest potential for human exposure.

The risk assessment may show that the total risk is so small that no further consideration is warranted. Alternatively, it may identify a particularly hazardous, apparently unnecessary situation that the Agency may want to investigate further. If the latter is the case, the Agency would examine the particular situation to find if there is a way to reduce the exposure levels. The particular situation could be referred to OSHA if it is a correctable workplace problem. The Agency would also examine the situation to determine the cost and availability of substitutes. This rule will not obtain information about substitutes; the Agency believes that it already possesses sufficient information to conduct analyses of substitutes. A great deal of information about the development of substitutes has been submitted to the Agency since the initiation of the asbestos investigation. In addition, EPA and CPSC jointly sponsored a national workshop on substitutes for asbestos in July 1980, where a great deal of information was presented. A record of the workshop can be found in the EPA publication "Proceedings of the National Workshop on Substitutes for Asbestos", EPA-560/3-80-001, which can be acquired from the National Technical Information Service (NTIS).

The Agency will also examine a hazardous situation to determine why it exists and the likelihood that it will continue. With the level of risk already defined, Agency analysts would determine the value and benefits that can be attributed to that situation. With a baseline understanding of the current economic value, Agency analysts can forecast the situation as it will be several years later if uninterrupted by regulation. Trend analysis permits the Agency to study the effects of market forces that encourage or discourage growth. Baseline data can be used to predict the future situation, which can then be compared to projections of regulatory effects to estimate the incremental change that could result from various regulatory options. The

principal economic measures that will be determined from data obtained through this rule are the value of production, the importance of the asbestos activity to the total value produced at the reported sites, the number of employees, the relative value of imports to exports, and the relative value of production to the Gross National Product. These measures will illustrate the monetary importance of the product to the plant site, to the company, to the total asbestos market, to the nation, and to the balance of trade.

Primary processors will report the value of their production for the last three years, describing the amount made for both export and domestic markets. Data from three years will permit analysts to use a multi-year average that is more reliable than data from a single year. Primary processors will report their consumption of bulk asbestos each year and estimate the relative value of their asbestos activity to total production at the plant site. Secondary processors will report the production of end products in which they incorporate the asbestos material and the purpose of including that material in the product. Both types of processors will report the total number of employees at the plant site as well as the number of production employees making subcategories of end products. With this detailed information, the Agency will be able to predict the future value of production and to establish what might be the economic effects of regulation.

Where the Agency finds that regulatory proceedings are appropriate, it will, through this rule, already have collected information necessary to describe fully the expected effects of the possible alternatives and to perform the analyses required by E.O. 12291. Thus, a complete data base provided by this rule will preclude the need to obtain additional data later in the investigation, which would delay resolution of the investigation. Timely action will benefit the Agency, industry, and the public by providing a means to take immediate action that protects public health and by removing a cloud of uncertainty over other uses of asbestos.

The primary purpose of gathering these data is to support the TSCA investigation. However, as noted earlier, other EPA offices and Federal agencies may also utilize the data base in any studies that involve the commercial and industrial uses of asbestos. EPA's Office of Air Quality Planning and Standards (OAQPS) is reviewing the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). Data from this rule that characterize and quantify emissions from stationary sources, the current economics of the industry, and its pollution control practices will be of value during the appraisal of this 1973 standard. EPA's Office of Solid Waste (OSW) may develop guidelines for the handling and disposal of asbestos-containing wastes. OSW expects to use data from this rule that quantify the kinds of waste presently generated by manufacturers and describe how and where those companies currently dispose of their wastes. Information that characterizes the kinds of asbestos-containing waste and current waste disposal practices will permit analysts to determine the relative degree of hazard posed by waste disposal activities. The Consumer Product Safety Commission (CPSC) is examining consumer products to determine what products may pose a chronic hazard to consumers. EPA has coordinated the data requirements of this rule with CPSC to eliminate duplication and to ensure that the reports will be useful to the CPSC investigation. This rule will provide a listing and quantification of imported and domestically produced consumer products containing asbestos which is not presently available. OSHA and MSHA have supported this rule throughout its development, because a current listing of companies, products, numbers of employees, and exposure levels would be very useful in reviews of the asbestos workplace exposure standards.

III. What to Report

EPA has developed two forms which are to be completed by respondents. The composite form, EPA Form 7710–36, "Reporting Commercial and Industrial Use of Asbestos," (hereafter referred to as the "Primary Form"), has individual sections for reporting data about products, production, asbestos consumption, employees, workplace exposures, waste and disposal, pollution control equipment, and estimated quantities of asbestos emissions. Production and importation from 1979–1981 will be reported by category of product, rather than by individual product lines. Respondents will fill out the sections that apply to them. Each respondent is to complete the relevant sections of the form depending on the activities of the reported plant site. The instructions to the form clearly list the sections that are to be completed by miners and millers, importers of bulk asbestos, and primary processors respectively. Those persons will complete all applicable sections of the Primary Form, and will report all asbestos importation and processing activities in the first reporting phase. In addition, the Primary Form contains separate sections to be completed in a second reporting phase by a sample of persons who are only secondary processors and importers of asbestos-containing products. Persons from those segments who are selected to complete the Primary Form during the sample survey will complete the applicable sections (see discussion below in unit VI, "Reporting Procedures").

EPA Form 7710–37, "Secondary Processing and Importation of Asbestos Mixtures," (hereafter referred to as the "Secondary Form"), is a short survey form which requires identification of asbestos mixtures or components, the amounts consumed or imported in 1981, and the products into which these mixtures and components are incorporated. The Secondary Form, to be completed by secondary processors and importers of asbestos-containing products, will serve several purposes for the Agency. The procedural purpose of the Secondary Form is to permit EPA to identify the companies in these groups in the least burdensome manner so that only a representative sample of the groups will be required to complete the Primary Form. The information from the Secondary Form, because it identifies firms and products and production amounts, will in itself provide EPA with valuable information. Data from the Secondary Forms will show the breadth of the secondary processor population and the variety of asbestos-containing products that are presently manufactured or imported. Finally, the reports of the quantities of asbestos mixtures that were consumed or imported in 1981 will permit EPA to gauge the present levels of processing and importation of asbestos products. These data will be used in estimating potential worker and consumer exposure and in judging the economic consequences of alternative options. In addition, knowing the products of secondary processing will support determinations of the availability of substitutes.

IV. Who Reports

This rule defines who must report and what to report according to the industrial activity of the respondent during 1981. The Primary Form must be completed by all persons who mine, mill, import, or process bulk asbestos. The Secondary Form must be completed by secondary processors or persons who import asbestos mixtures or articles containing asbestos components. Some

of these persons will be selected subsequently also to complete the Primary Form. This section will clarify the meaning of some of these terms that are specific to this rule.

Under this rule, a manufacturer is a person who mines or mills (produces) bulk asbestos or a person who imports asbestos either as bulk asbestos or as part of a product. Persons who, in addition to manufacturing, also process their products will report as both manufacturers and primary processors, as described below. This rule does not require reports by manufacturers or processors of products which contain asbestos as a contaminant or an impurity. While the Agency is concerned about the health risk posed by fibrous minerals in many ores or other products, this subject is not within the scope of the present rule.

TSCA defines a processor, in part, as a person who prepares a chemical substance of mixture, after its manufacture, for distribution in commerce. This rule classifies processors into two groups according to their starting material. "Primary processors of asbestos" are those whose starting material is bulk asbestos. "Secondary processors of asbestos" are those whose starting materials are asbestos mixtures.

A primary processor starts with bulk asbestos and makes a mixture that contains asbestos fiber. A primary processor may simply mix or repackage different types or sizes of fiber and then sell that product. Such mixing or repackaging of fibers is considered primary processing of bulk asbestos for the purpose of this rule. Asbestos mixtures are products to which asbestos fiber has been intentionally added and which can be used or processed further and incorporated into other products. For example, asbestos cement, asbestos paper, and asbestos-reinforced plastics are asbestos mixtures. In some cases, a primary processor further processes the asbestos mixtures. If so, the person is also a secondary processor. For instance, asbestos paper can be further processed to incorporate it into an article, or asbestos-reinforced plastics can be further processed to make vinyl-asbestos floor tile. Under this regulation, persons who are involved in both primary and secondary processing activities at the reported plant site must report both types of activities on the Primary Form. Only persons who are solely secondary processors at the reported plant site report as secondary processors.

"Secondary processors" are those who start with asbestos mixtures and incorporate them into their own products. For example, persons who fabricate asbestos cement sheet by cutting the sheet to make an electrical switch board, or persons who make garments by cutting an asbestos textile, are secondary processors. A person who fabricates asbestos cement sheet by cutting it to a specific dimension for a customer is a secondary processor. An automobile manufacturer is a secondary processor if he incorporates asbestos felt into an automobile as a hood insulation blanket or makes heating vent ducks from asbestos paper. A paint formulator is a secondary processor if he purchases a paint that contains asbestos and reformulates the paint by adding some agent to give the paint special properties for specific applications. A complete list of categories of asbestos-starting materials and products may be found in EPA Forms 7710–36 and 7710–37.

Those who import an asbestos mixture or an article containing an asbestos component(s) are required to identify themselves and the asbestos component(s) of the imported product. By this requirement, EPA is attempting to determine what asbestos-containing products are being distributed to consumers and to industry. This will enable the Agency to estimate the total health risk posed by asbestos, including the risk from imported products. The Agency recognizes that there is a large universe of asbestos-containing products that are imported, and that some importers may not know that discrete components of imported merchandise contain asbestos. To ease the burden on companies that import a number of products that may contain asbestos, this rule requires importers to provide information relating only to the products listed in the reporting forms. Therefore, in some cases, EPA will not learn of or obtain data on all imports that contain asbestos. However, the lists of products are very comprehensive and EPA expects to obtain information on most imports that contain asbestos. Some products, such as automobiles, are deliberately omitted because the Agency can otherwise obtain necessary information. Importers should note that under this rule, they are not required to conduct extensive research or to contact the foreign manufacturer to learn this information. Thus, under the rule, importers are required to report to the extent that this information is in their possession.

This rule requires reporting by manufacturers (including importers) and processors of asbestos mixtures. Section 8(a) states that reporting by manufacturers or processors of mixtures should be required only when the Administrator determines that it is "necessary for the effective enforcement" of TSCA. Those who manufacture or process asbestos mixtures are also necessarily processors of asbestos, the chemical substance. Therefore, the "effective enforcement" finding is not needed. Nevertheless, the characterization of these products and processing activities is essential to the asbestos investigation and to the exent that such persons can be regarded as manufacturers or processors of mixtures, the Administrator finds that it is necessary for the effective enforcement of TSCA. For a more detailed discussion of this issue, see the preamble to the proposed rule at 46 FR 8204, which is hereby adopted.

V. Exemptions From the Rule

The Agency is exempting certain classes of potential respondents from the requirements of the rule. The exemptions are designed to reduce the overall burden of the rule while still obtaining sufficient information for analyses that are planned.

All companies employing 10 or fewer employees are exempted from the requirements of this rule. EPA estimates that over 40 percent of companies not otherwise exluded will be exempted as a result of this provision, while firms that account for approximately 97 percent of employees and sales will still be included. Further discussion of this provision can be found below in unit XIII, "Regulatory Flexibility Act."

Certain secondary processors are excluded from this rule. Secondary processors are exempted if they apply, assemble, install, erect, or consume asbestos products without modifying or fabricating the asbestos products. For instance, an appliance manufacturer who installs electric motors containing asbestos components is excluded if the motor is made elsewhere. Similarly, an automobile manufacturer need not report the installation of pre-fabricated hood insulation blankets if no fabrication is required during installation. An airplane manufacturer would not report the application of asbestos-containing caulk. Included in this category are secondary processors who merely adjust an asbestos mixture prior to or during assembly or installation. While the Agency believes there may be risks from asbestos exposures in these categories, it expects to complete necessary analyses with estimates and extrapolations of data reported by the persons who make the asbestos-containing products that are processed by the excluded industries. For example, processors infrequently

"true" pre-formed brake linings during assembly with brake foundations to get a better fit. In this case, reports from manufacturers of the pre-formed brake linings will sufficiently quantify production of the friction material product subcategories. Exposure scenarios for the excluded industries can be quantified by relating expected exposure levels with the quantities of products that are made. Therefore, reports from these excluded industries are not essential.

This rule also exempts persons who repair articles, repackage asbestos mixtures without modification, or who engage in construction work. The Agency proposes to exempt these persons from reporting primarily because so many persons are in these categories, the workforce is constantly changing, and they are generally composed of many small businesses, such as brake repair shops and construction companies. Also, as is the case with other excluded industries, exposure scenarios for the construction and brake repair industries can be developed by relating expect exposure levels with production levels reported by product manufacturers.

Section 8(a) of TSCA does not apply to distributors of chemical substances or mixtures. Therefore, persons who are solely distributors, and do not manufacture, process, or import, are not covered by this rule.

Reporting is not required by persons who are "end users" of bulk asbestos or asbestos products and do not further distribute such items in commerce. The most common example of this is in the manufacture of chlorine, where some persons use asbestos as a diaphragm to separate chlorine and caustic soda. While much bulk asbestos is consumed annually by this industry and much waste generated, asbestos fiber is not present in the resultant products which are distributed in commerce and these activities are therefore not "processing" of asbestos.

VI. Reporting Procedures

Companies must report the activities of each plant site on an individual reporting form with one exception. That exception is that respondents have the option to report all of their company imports or exports on a single form. The form instructions explain further how this is to be done.

Miners, millers, primary processors, and importers of bulk asbestos must submit all appropriate portions of the Primary Form within 90 days after the effective date of the final rule. If the respondent's activities include "secondary processing" or importing of asbestos mixtures or articles containing asbestos components, all such activities, including those at other plant sites, must be reported at the same time the person reports as a miner, primary processor, or importer of bulk asbestos.

EPA will require reporting in a different way for persons who are solely secondary processors or importers of asbestos mixtures. Apparently there are many thousands of persons who are secondary processors or importers of asbestos-containing mixtures. EPA has devised a scheme to reduce the reporting burden for these companies. Persons who are solely secondary processors or importers of asbestos mixtures or articles containing asbestos components will report to EPA in phases. First, they will submit the Secondary Form within 60 days after the effective date of the rule. The Secondary Form reports will be used by EPA to improve the Agency's knowledge of the products being made with asbestos, the number of companies making the products that contain asbestos and the amounts of asbestos mixtures they use, and the kinds and amounts of mixtures and products being imported.

Further reporting of the information on the primary form by some respondents will be necessary to develop more complete profiles and projections for regulatory analyses. The Secondary Form will not ask all respondents (estimated to comprise 5,750 reports) for the detailed information the EPA would like to consider in the risk and economic analyses. Instead, the Agency plans to have a representative sample of Secondary Form respondents report more detailed information. The Agency wants to account for 100 percent of asbestos usage, but for purposes of this analysis, and to reduce the reporting burden, the Agency has determined extrapolations can be made from less than 100 percent. EPA believes that a sampling technique can provide information that would adequately describe secondary asbestos processing and products. Sampling to decrease the number of processors required to submit additional detailed information will reduce the overall burden of additional reporting substantially. In unit VIII, "Reporting Burden", EPA estimates that Phase 2 reporting will be required from approximately 1500 of the Phase 1 respondents. The objective is to sample only the number necessary to meet the goal of attaining a reliable sample.

EPA plans to use a stratified random sampling method as the basis for the sample survey. That is, the respondents to the Secondary Form will be divided into non-overlapping and reasonably homogeneous strata and then sampled by stratum. The strata will be defined by all or an appropriate subset of the following variables: reported asbestos-starting material, reported asbestos end product, and the volume of asbestos-starting material annually consumed. Additionally, the population may be further stratified according to size (the amount of asbestos mixture processed or imported) and geographic location, which will ensure that any sample fully represents the whole population. The type of asbestos-starting material and the asbestos end product would permit EPA to analyze a representative portion of each product category application. Consideration of the amount of the asbestos-starting material that is consumed will better ensure representation of both larger and smaller processors of asbestos materials.

The Agency can make the final decision on which variable(s) to use in stratifying and how large the sample will be only after examining the composition of the Secondary Form respondents, since the actual numbers of respondents and the products they report in the first phase will not be known until the first phase reports are submitted. The Agency will use standard statistical techniques in conducting the sample survey.[1] The Agency will stratify and sample respondents with the goal of minimizing the reporting burden as much as is practical. To extrapolate an estimate about a population from a sample survey requires obtaining reports from enough respondents to represent the whole population. To make an estimate about a stratum composed of a few respondents may require sampling a larger percentage than would be necessary to make an estimate of the same reliability about a stratum composed of a greater number of respondents. EPA will use one or a combination of the variables listed in the preceding paragraph to stratify respondents for the sample survey. The Agency will select the stratifying variable(s) which will result in the fewest number of respondents while still ensuring a reliable statistical sample.

The Secondary Form respondents selected for more detailed reporting will be notified by certified letter. These persons will have 90 days to complete relevant portions of the Primary Form.

Some persons subject to reporting under this rule may be exempted from reporting certain information already

[1] Kish, Leslie. Survey Sampling. New York: John Wiley. 1965.

reported to EPA or CPSC. A company which has adequately reported data to EPA will not be required to report the same information again, and must write "EPA" in place of the data on the form. Persons who have already reported production or importation quantities to CPSC must still identify themselves and the names of their products to EPA according to the requirements of this rule. However, data already reported must be referenced by writing "CPSC" in place of the data, unless the respondent specifically requested CPSC not to release the data to EPA.

The Agency intends to send reporting forms directly to as many potential respondents as possible. To identify persons currently subject to this rule, a master list of persons who produce or make asbestos products has been assembled from a number of different lists supplied by industry associations, Government agencies, and industry information that is publicly available. In addition, efforts will be made to publicize these reporting requirements widely, so that persons as yet unknown to EPA will comply with these reporting requirements.

VII. Confidentiality

The Agency has developed specific instructions for asserting and certifying claims of confidentiality for any information submitted in response to this rule. These instructions are incorporated in the reporting forms and may be found in §§ 763.76 and 763.77 of the rule. Any claims of confidentiality must be made at the time of submission as provided in 40 CFR Part 2 as amended September 8, 1978 (43 FR 39997), and March 23, 1979 (44 FR 17673), and in the manner specified in the reporting forms of this proposed rule. To ensure proper handling, confidential material must be submitted to: U.S. Environmental Protection Agency, Post Office Box 2070, Rockville, MD 20852.

This rule employs a simple certification method to assert a claim of confidentiality. To assert a claim of confidentiality, the respondent must mark the applicable line on the form that contains confidential information. The respondent must certify that the company has taken measures to protect the confidentiality of the information, that the information is not publicly available, and that disclosure of the information would cause the company substantial competitive harm. All of these conditions must exist for any information to be confidential. Determinations on confidentiality will be made by EPA in accordance with 40 CFR Part 2.

The Agency intends to aggregate information about production, consumption, employment, and environmental release that is reported for this rule. The Agency will primarily use aggregate data for analyses necessary to support the TSCA section 6 regulatory investigation. These data aggregates and analyses will be part of the section 6 asbestos rulemaking record that is available to the public. To protect confidential information in the aggregate data sets, in most cases no data from individual reports will be released, even if they are nonconfidential. Releasing discrete data could jeopardize the aggregate data sets, because through subtraction of nonconfidential data from the aggregate it could be possible to ascertain specific confidential data.

As previously stated, EPA intends to share all reported data with other Federal agencies, including confidential data in individual reports. However, EPA will require that personnel from other agencies obtain a TSCA security clearance before access to confidential data is granted (See "TSCA Confidential Business Information Security Manual," Chapter 6—Security Requirements for Other Federal Agencies). Similarly, EPA will require that an agency adopt certain security procedures before confidential information can be stored at that agency.

VIII. Changes From the Proposal

The final rule modifies several requirements of the proposed rule to ease the reporting burden, to respond to specific problems that were raised by commenters on the proposal, or to obtain the most useful information. Further discussion of comments on the proposal and our responses can be found in a document entitled "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule," which is part of the public record for this rule.

The final rule does not include the proposed requirement to keep lists of customers and to submit the lists at the Agency's request. Commenters convinced the Agency that that the information would be very sensitive and the requirement could be very burdensome. Also, the purpose of this rule is to characterize the industries making essentially finished goods, while most customers are "users" or distributors and, therefore, outside the scope of the present rule.

Several changes to the reporting forms should be noted. The Agency has substantially reduced the amount of requested information by requiring respondents to report production of subcategories of end products for only 3 years. The proposal would have required production data for 5 years about specific end products, including trade names, and data for 10 years about the importation or production of bulk asbestos. Data reported according to consistent subcategories of products will provide sufficient detail for our analyses. The Agency believes that data for 3 years will sufficiently describe the current situation, as well as provide reliable averages for analyses. An additional change is that data on bulk asbestos fiber is required only for each type of mineral. Again, EPA is not requiring data about specific grades of chrysotile fiber because the Agency's analyses do not need that level of detail.

The requirement to summarize workplace monitoring data is revised to increase the utility of the reported data and facilitate reporting. Respondents will still report only monitoring data that already exist in their files; however, they will summarize that data according to the types of end products they are reporting. The reports will be more useful to the Agency and OSHA by directly relating workplace concentration levels to the number of workers making the end product that is reported. The final rule does not require respondents to estimate the number of hours that workers are annually exposed to the measured concentration levels. While information on the duration of exposures would be useful, commenters asserted that extensive and burdensome searches through payroll records would be necessary to locate the data. Since the reports will consist of summaries of 8-hour time-weighted averages, Agency analysts will use assumptions and other available information to calculate duration of exposures.

The requirement to report air pollution control equipment has been modified at the request of EPA's Office of Air Quality Planning and Standards (OAQPS). The final rule requires respondents to answer several technical questions about each piece of equipment, replacing the proposal's requirement to provide the brand name and model number of each piece. The revised questions will obtain all the information necessary to estimate emissions and costs and will eliminate the need for submitters to calculate the quantities of asbestos that are released. OAQPS believes that the revisions will reduce reporting requirements while improving the usefulness of the data.

EPA is including two provisions to address special problems of importers. First, importers were concerned they would be unable to identify all imported

goods that contain asbestos and, therefore, would not fully comply with the rule. This rule provides that importers need report information relating only to the types of products listed on the form, which should cover most such imports. Second, importers asserted that the requirement to provide "reasonably ascertainable" information on the Primary Form during the second phase of reporting could require them to seek information from foreign manufacturers, possibly at considerable cost. The final rule requires importers to provide information "in their possession" during both phases of reporting.

IX. Reporting Burden

In order to assess the clarity of the form and to ensure that data are reported in the most effective manner, the Agency conducted a pre-test of the form through the Institute for Survey Research, Temple University. The respondents were members of the Asbestos Information Association. This pre-test was quite valuable to EPA in improving the clarity and coherence of the form. In addition, the respondents estimated the cost of completing each section of the form. The final report by the Institute for Survey Research, "Design and Testing of Asbestos Use Reporting Form", is part of the public record for this rule. The pre-test was not a statistically-based sample and only eight companies were asked to participate. Therefore, the resultant cost estimates could not be used directly to compute the reporting impacts of this rule. However, the pre-test results helped EPA arrive at an impact estimate. A detailed description of the reporting burden estimates can be found in a report by Arthur Young & Company, "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", which is part of the public record for this rule. The results of the pre-test and the reporting burden calculations are summarized in the "Reports Impact Analysis", an internal EPA report that is available in the OPTS Reading Room. The documents cited above may be acquired by writing or calling the Industry Assistance Office at the address and telephone number given at the beginning of this notice.

In unit XII of this preamble—"Regulatory Flexibility Act"—EPA calculates that 40 percent of the secondary processors will be small businesses and will be exempt from this rule. Therefore, in this section costs are calculated for 5,385 secondary processors, while we estimate there may be a total of 8,974 secondary processors if small businesses are counted. (These estimates are derived from a formula used in 1976 by the Asbestos Information Association, which is described in the "Reports Impact Analysis.") In addition, EPA calculations exclude primary processors who are known to be small businesses. However, the Agency does not calculate the cost reduction from excluding small importers because the composition of that segment is not well-defined, although it does expect that this group will contain some small businesses. Therefore, the actual reporting costs may be less than our present calculations.

As already discussed, two reporting forms will be used for this rule. The Primary Form will be completed by miners, millers, primary processors of asbestos, and importers of bulk asbestos in a first reporting phase. EPA estimates that for this group of respondents, a total of 487 reports would be received by the Agency. Completion of these reports would require a total of 7,500 hours, and cost approximately $230,000.

Secondary processors and importers of asbestos mixtures or articles containing asbestos components will be required initially to complete the Secondary Form. The Agency estimates that it will take four hours to complete each form, at a cost of $120 per form. The Agency anticipates receiving 5,750 such reports. Therefore, the Secondary Form reporting would require a total of 23,000 hours, and would cost approximately $690,000.

The Agency expects that approximately 1,500 of those persons who initially complete the Secondary Form will be selected, in a sample survey, to complete the Primary Form. The sample survey will require a total of 36,000 hours, and would cost $1,100,000.

Based on these cost estimates, and assuming a small business exclusion, EPA estimates the total cost of reporting for this rule would be $2 million, requiring 66,500 reporting hours.

Using available data, an economic impact analysis of the proposed rule was performed for primary processors. Using the measure of the one-time cost as a percent of annual gross profits, the estimated impact was found to be minimal (around 0.1 percent) for even the smallest primary processors (the ones most likely to be impacted).

Such an economic impact analysis was not possible for the other industry segments affected by this rule due to unavailability of data. EPA did compare the average value of shipments for four-digit SIC codes for primary processors and other SIC codes likely to contain asbestos secondary processors. This comparison suggested no significant difference between primary processors and other industry segments in the size ranges of 10–19 employees and 20–49 employees. These size categories are the smallest establishments likely to be impacted by this proposed rule and the ones most likely to experience adverse effects. On this basis, EPA feels that the potential impacts on secondary processors and others in the asbestos industry will be of a similar small magnitude as the impacts estimated for the primary processors. Refer to two documents in the public record: (1) "TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos: Economic Impact on Secondary Processors," memorandum from Regulatory Impacts Branch, December, 1980, and (2) "Economic Impact Analysis for the TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos," Arthur Young & Company, Washington, DC, October, 1980.

X. Sunset Provision

The general requirements of this rule will expire 5 years after the effective date of the rule. The selection and notification of sample survey participants for Phase 2 reporting (see unit VII of this preamble and § 763.71(c) of the rule) will take place within three years after the effective date of the rule. If EPA determines that any requirements of this rule should be continued, a notice to that effect will be published for comment.

XI. Public Record

EPA has established a public record for this rulemaking as defined in section 19(a)(3) of TSCA (docket number OPTS–84004). The public record, along with a complete index, is available for inspection in the OPTS reading room, E–107, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays, (401 M St., S.W., Washington, D.C. 20460). This record contains the basic information that the Agency considered in developing this rule. The Agency will supplement the record with additional information as it is received. This record includes the following:

1. The proposed rule, published in the **Federal Register** of January 26, 1981, (46 FR 8200).

2. Comments received in response to the proposed rule, including any comments received from the Office of Management and Budget during Paperwork Reduction Act of 1980 review.

3. "Commercial and Industrial Use of Asbestos Fibers; Advance Notice of Proposed Rulemaking," published in the **Federal Register** of October 17, 1979 (44 FR 60061).

4. "Commercial and Industrial Use of Asbestos Fibers. Extension of Comment Period and Announcement of Additional Control Option," published in the **Federal Register** of December 17, 1979 (45 FR 18374).

5. Comments received in response to the Advance Notice of Proposed Rulemaking and the Notice of Proposed Rulemaking.

6. Reports Impact Analysis of this rulemaking.

7. "Statistics for Companies with 10 or Fewer Employees" memorandum, from Chemical Information Reporting Branch, October 30, 1980.

8. "Design and Testing of Asbestos Use Reporting Form," Institute for Survey Research, Temple University, Philadelphia, PA., June 30, 1980.

9. "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", Arthur Young & Company, Washington, D.C., October, 1980.

10. The Technical Information Summary for this rulemaking.

11. The Information Use Plan for this rulemaking.

12. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

13. "Public Comments on the Proposed TSCA Section 8(a) Asbestos Reporting Rule."

XII. Regulatory Assessment Requirements

This rule fully complies with the following regulatory assessment requirements.

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this regulation is not Major because it does not have an effect of $100 million or more on the economy and it will not affect competition, employment, or production costs. EPA estimates the total cost of this one-time reporting requirement is $2.0 million. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and EPA response to those comments will be available for public inspection in the record for this rulemaking.

B. Regulatory Flexibility Act

The Agency has included several provisions in this rule to minimize both its overall impact on businesses and the reporting requirements for individual companies. First, EPA is exempting the smallest companies that could be subject to the rule—those companies with 10 or fewer employees. This small business exemption will eliminate reporting from over 40 percent of the companies and the Agency estimates that it will reduce the overall potential cost of the rule by $1.1 million. EPA is also excluding from any reporting two large segments of processors that are composed of a high percentage of small businesses—construction and brake repair companies. Including those segments would raise the overall cost of this rule by several million dollars.

Second, every effort has been made to minimize the amount of data to be reported. Based on a pretest by industry and public comments, the Agency has designed the forms to require only common business information essential to the Agency's investigation. The economic impact analysis estimates that the median cost to any single respondent submitting the long form will be $1,100, which is about 0.1 percent of the smallest company's profits. The reporting costs for many small businesses will probably be less than the median cost because they will generally report about fewer products and employees.

Third, EPA will apply a sampling approach to over 90 percent of the respondents. Only a representative sample of secondary processors, which is the largest industrial segment subject to the rule and is composed of a large percentage of small businesses, will be selected for full reporting. In phase one, secondary processors will submit a short, one-page form that EPA estimates will take at most four hours ($120) to complete. The Agency will select the minimum necessary number of companies from phase one respondents to submit the long form in phase two. Utilizing this sample survey means that only ⅛ of all respondents to the rule will have to complete the long form.

The Agency is including these provisions as a special consideration to small businesses. The Agency's economic impact analysis shows that this rule will have a negligible impact on any business. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. As required, EPA has consulted with the Office of Advocacy, Small Business Administration.

C. Paperwork Reduction Act of 1980

As just described, the Agency has made every effort to minimize the amount of required information and the burden on respondents to the rule. The reporting forms were pretested, the proposed requirements have been reduced in a number of ways, and 90 percent of the respondents will be sampled. Furthermore, this rule exempts entire classes of businesses in cases where the Agency believes necessary analyses can be conducted with information that is otherwise available.

The Agency has prepared extensive plans to utilize fully all information that is collected through this rule. The Agency's "Information Use Plan", which is part of the public record, describes the specific uses that are planned for the required data elements. In addition, the Agency coordinated these information requirements with other Federal agencies to maximize the usefulness of reported data. The information to be reported does not duplicate efforts by other Federal agencies and the data will be useful to several regulatory agencies. An automated information system will ensure the most effective use of submitted data. Fully operational Agency procedures will protect confidential business information contained in the reports.

Information collection requirements contained in this regulation (§ 763.71) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000-0478.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Asbestos.

Dated: July 23, 1982.

Anne M. Gorsuch,

Administrator.

PART 763—ASBESTOS

Therefore, 40 CFR Part 763 is amended by adding a new Subpart D to read as follows:

Subpart A-C—[Reserved]

Subpart D—Reporting Commercial and Industrial Uses of Asbestos

Sec.

Authority: Sec. 8(a) Toxic Substances Control Act (TSCA), Pub. L. 94–469, 90 Stat. 2029, (15 U.S.C. 2607(c)).

Subpart D—Reporting Commercial and Industrial Uses of Asbestos

§ 763.60 Scope and compliance.

(a) This rule requires reporting by persons who manufacture, import, or process asbestos. Different reporting requirements are imposed depending on the person's activity. Manufacturers, importers and processors of commercial and industrial asbestos fiber must report quantity, use, and exposure information. Importers of mixtures and articles containing asbestos and processors of asbestos mixtures will report to EPA in two phases. They initially must report limited information about processing or importation. Some must subsequently report additional information if they are selected as respondents in a sample survey.

(b) Subsection 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this rule. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 763.63 Definitions.

The definitions in section 3 of TSCA and the following definitions apply for this rule:

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

(b) "Asbestos mixture" means a mixture which contains bulk asbestos or another asbestos mixture as an intentional component. An asbestos mixture may be either amorphous or a sheet, cloth fabric, or other structure. This term does not include mixtures which contain asbestos as a contaminant or impurity.

(c) The term "bulk asbestos" means any quantity of asbestos fiber of any type or grade, or combination of types or grades, that is mined or milled with the purpose of obtaining asbestos. This term does not include asbestos that is produced or processed as a contaminant or an impurity.

(d) "EPA" means the United States Environmental Protection Agency.

(e) "Importer" means anyone who imports any chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the U.S. and includes the person liable for the payment of any duties on the merchandise, or an authorized agent on his behalf. Importer also includes, as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the U.S. consists of the 50 states, Puerto Rico, and the District of Columbia.

(f) "Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person might be expected to possess, control, or know, or could obtain without unreasonable burden or cost.

(g) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, and

(2) For use by the manufacturer, including use for product research and development, or as an intermediate. "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts and coproducts that are separated from that other substance or mixture, and impurities that remain in that substance or mixture. Byproducts and impurities may not in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(h) "Miner of asbestos" is a person who produces asbestos by mining or extracting asbestos-containing ore so that it may be further milled to produce bulk asbestos for distribution in commerce, and includes persons who conduct milling operations to produce bulk asbestos by processing asbestos-containing ore. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore. To mine or mill is to "manufacture" for commercial purposes under TSCA.

(i) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.

(j) "Primary processor of asbestos" is a person who processes for commercial purposes bulk asbestos.

(k) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(l) "Secondary processor of asbestos" is a person who processes for commercial purposes an asbestos mixture.

(m) "Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one manufacturing plant on a single site.

(n) "Small manufacturer, processor, or importer" means a manufacturer or processor who employed no more than 10 full-time employees at any one time in 1981.

§ 763.65 Who must report.

(a) Persons who were miners or primary processors of asbestos, or importers of bulk asbestos in 1981 must complete and submit a separate EPA Form 7710–36, Reporting Commercial and Industrial Use of Asbestos (see § 763.76), for each site and for each company activity not elsewhere reported, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, shall report.

(b) Persons who were secondary processors of asbestos in 1981 must complete and submit Parts I and II of EPA Form 7710–37, Reporting Secondary

Processing and Importation of Asbestos Mixtures (see § 763.77), for each site or activity, according to the schedule in § 763.71.

(c) Persons who were importers in 1981 of asbestos mixtures or articles containing asbestos components must complete and submit Parts I and III of EPA Form 7710–37, Reporting Secondary Processing and Importation of Asbestos Mixtures, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent(s), shall report.

(d) Secondary processors of asbestos and importers of asbestos mixtures or articles containing asbestos components must complete and submit a single EPA Form 7710–36, Reporting Commercial and Industrial Use of Asbestos, according to the schedule in § 763.71(c), if selected for further reporting as described in § 763.71(c).

(e) Particular information required on EPA Form 7710–36 which has been previously submitted to the Consumer Product Safety Commission (CPSC) in accordance with a general order dated Dec. 22, 1980 (45 FR 84384), may be referenced in the appropriate place on the form and need not be submitted unless the respondent has informed the CPSC of his objection to any sharing of the data with EPA. Information for 1981 which was not required by CPSC must be reported on the EPA forms.

(f) The following persons are not subject to §§ 763.65 and 763.71.

(1) Secondary processors of asbestos, to the extent that they process an asbestos mixture to repair articles, to construct buildings or other such construction activities, or to apply, assemble, install, erect, consume, or repackage the mixture without modification.

(2) Persons who are small manufacturers, processors, or importers, as defined in § 763.63(n).

§ 763.71 Schedule for reporting.

(a) All miners, primary processors, and importers of bulk asbestos subject to reporting under § 763.65(a) shall submit required data on EPA Form 7710–36 within 90 days after the effective date of this rule.

(b) All secondary processors and importers subject to reporting under § 763.65 (b) and (c) shall submit required data on EPA Form 7710–37 within 60 days after the effective date of this rule.

(c) All persons subject to paragraph (b) of this section who are selected for additional reporting shall submit required data on EPA Form 7710–36 within 90 days after receipt of EPA notification to do so. Selections will be made in the following manner. The respondents will be selected using a stratified random sampling technique. First, qualified statisticians will review reports on EPA Form 7710–37 and determine the optimal method to stratify respondents according to the composition of the respondent population. The strata will be defined by all or an appropriate subset of the following variables: the end product; the asbestos mixture that is the starting material in the end product; the volume of the asbestos mixture annually consumed or imported. Respondents will be stratified into as few groups as reasonably possible. The size of the sample will be determined after all respondents have been stratified. EPA intends to require further reporting from the minimum number of respondents possible while still meeting the EPA needs for statistically sound data. If there are insufficient numbers of respondents in a group to perform a statistically sound sample survey, then all of the respondents in that group may be required to complete EPA Form 7710–36. A standard random selection technique will be employed to select persons who will be required to complete and submit EPA Form 7710–36. Notification shall be sent by certified letter, signed by the Office Director, Office of Toxic Substances, and will have attached copies of this rule and EPA Form 7710–36. Letters of notification will be sent by EPA no later than three years after the effective date of this rule.

(d) EPA Form 7710–36 and EPA Form 7710–37 can be obtained by writing or telephoning:

Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), Washington, D.C. 20460, Toll free: (800–424–9065), In Washington call: (554–1404).

(e) Completed forms must be mailed to: U.S. Environmental Protection Agency, Post Office Box 2070, Rockville, MD. 20852.

§ 763.74 Confidential business information.

(a) Any person submitting a document under this rule may assert a business confidentiality claim covering all or part of the submitted material unless otherwise instructed on the reporting form. EPA will disclose information covered by a claim only as provided in procedures set forth in 40 CFR Part 2.

(b) Certification for a claim made on any item reported under § 763.65 must be made by signing the certification statement as specified in the forms.

(c) If no certified claim accompanies a document at the time it is submitted to EPA, the document may be placed in an open file available to the public without further notice to the respondent.

§ 763.76 Reporting commercial and industrial uses of asbestos.

The following EPA Form 7710–36, Reporting Commercial and Industrial Uses of Asbestos, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is known to or reasonably ascertainable by the respondent, except for importers. Importers must report information on this form to the extent that it is in the possession of the respondent.

(a) EPA Form 7710–36 (5–80). [insert form]

(b) [Reserved]

BILLING CODE 6560–50–M

O.M.B. No. 2000-0478: Approval Expires June 30, 1985

EPA United States Environmental Protection Agency

REPORTING COMMERCIAL AND INDUSTRIAL USES OF ASBESTOS

When completed send this form to:

U.S. Environmental Protection Agency
P.O. Box 2070
Rockville, MD 20852

Please read the accompanying instruction booklet before completing this form. Note that a separate form must be submitted for each plant site, except that total imports or exports of bulk asbestos may be reported in a consolidated corporate report. The instructions provide further directions.

When this form is complete, enclose it in the preaddressed envelope provided. Should you have any questions, please contact the Industry Assistance Office toll-free at (800) 424-9065 or in Washington, D.C. at (202) 554-1404.

All persons who are solely secondary processors, importers of asbestos mixtures, or importers of articles containing asbestos components will report in the first phase on EPA Form 7710-37, titled "Secondary Processing and Importation of Asbestos Mixtures." These persons will report in this form, EPA Form 7710-36, only upon receipt of notice to that effect from EPA (see 40 CFR 763, part D).

A(1). RESPONDENT IDENTIFICATION

1. Company name | Plant site name

Address (Number and street)

City | County | State | ZIP code

2. Principal technical contact person | Name | Job title | Office telephone (Area code, number, extension)

3. *If applicable* — Record mine identification number ——

4. *If applicable* — Record the name and address of the parent corporation which is responsible for the fiscal management of the reporting site.

Name of parent corporation

Address (Number and street)

City | County | State | ZIP code

5. Record the total number of years during which the manufacture and/or processing of asbestos has been conducted at the reporting site. —— Number of years

A(2). RESPONDENT ACTIVITY

6. Identify your activity from the definitions in the instruction booklet and mark (X) the box next to the category below that best describes your activity(ies). Mark (X) next to all activities that you are reporting on this form. You must at least complete the portions of this report that are indicated next to the box you mark, and you must complete other sections if you conduct that activity. For example, if at the same plant site you process bulk asbestos to produce an asbestos mixture and you also process an asbestos mixture that is made at another location, then you as a primary processor must also complete part D as a secondary processor.

All persons who are miners, millers, primary processors, or importers of bulk asbestos must report their asbestos activities at all plant sites.

Mark (X) your activity(ies) that is reported on this form.

- ☐ Mine and mill — Complete parts A, B(1), G, H, I, J, K [B(3), if applicable]
- ☐ Primary processor — Complete parts A, C, G, H, I, J, K [B(3), if applicable]
- ☐ Importer of bulk asbestos — Complete parts A, B(2) [B(3), if applicable]
- ☐ Secondary processor — Complete parts A, D, G, H, I, J, K
- ☐ Importer of asbestos mixtures — Complete parts A and E
- ☐ Importer of article(s) containing asbestos component(s) — Complete parts A and F

A(3). CERTIFICATION FOR CLAIMS OF CONFIDENTIALITY

You may claim as confidential any information you submit on this form. The instructions provide specific instructions on how to assert claims of confidentiality. For information which you submit in attachments to the form, provide a copy which clearly indicates the information you wish to claim confidential.

Space is provided at the end of each line to claim information on that line confidential.

For any information on this form you claim as confidential, you must certify that the information is confidential. The signature below will attest to the truth and accuracy of the following statements. All four statements must be true about any information you claim confidential.

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.
2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need and in a judicial or quasi-judicial proceeding) without my company's consent.
3. The information is not publicly available.
4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

7. Signature of authorized official | Date

B(1). PRODUCTION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS MINED OR MILLED

Enter, in short tons, the amount of bulk asbestos you produced (mined or milled) for 1979 through 1981.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

B(2). IMPORTATION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS IMPORTED

Enter, in short tons, the amount of bulk asbestos you imported for 1979 through 1981.

Mark (X) one: ☐ This is a corporate consolidated report. ☐ This is a plant site report.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

B(3). EXPORTATION OF BULK ASBESTOS

QUANTITY OF BULK ASBESTOS EXPORTED

Enter, in short tons, the amount of bulk asbestos you exported for 1979 through 1981.

Mark (X) one: ☐ This is a corporate consolidated report. ☐ This is a plant site report.

Year	*Report in short tons*						Confidential Mark (X)
	Chrysotile	Crocidolite	Amosite	Anthophyllite asbestos	Tremolite asbestos	Actinolite asbestos	
1979							
1980							
1981							

EPA Form 7710-36 (6-12-82)

C. PRIMARY PROCESSOR PRODUCTION

Enter the following information for each type of end product that you shipped from your plant site. Classify your end products according to the list below.

End product shipped (Enter one end product per line) (1) Code number	Generic name	Type of asbestos fiber (Use one line per mineral type) (2)	Year	Quantity of asbestos consumed (Short tons) (3)	Product shipments: Total annual production (4) Quantity	Unit of measure	Value shipped (Thousands of dollars) (5) Domestic	Exports	Confidential Mark (X)
		☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						
	☐ Continued	☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						
	☐ Continued	☐ Chrysotile ☐ Anthophyllite	1979						
		☐ Crocidolite ☐ Tremolite	1980						
		☐ Amosite ☐ Actinolite	1981						

(6) Estimate the percentage of the total value shipped from the plant site reported here as primary processor production in 1981 ——— %

Asbestos Mixture Product Subcategories

Papers, felts, or related products	Unit of measure
01. Commercial paper	Short tons
02. Rollboard	Short tons
03. Millboard	Short tons
04. Pipeline wrap	Short tons
05. Beater-add gasketing paper	Short tons
06. High-grade electrical paper	Short tons
07. Unsaturated roofing felt	Short tons
08. Saturated roofing felt	Short tons
09. Flooring felt	Short tons
10. Corrugated paper	Short tons
11. Specialty paper (Specify generic name)	Short tons
Floor coverings	
12. Vinyl-asbestos floor tile	Square yards
13. Asbestos-felt-backed vinyl flooring	Square yards

Asbestos-cement products	Unit of measure
14. A/C pipe and fittings	Short tons
15. A/C sheet, flat	100 sq. ft.
16. A/C sheet, corrugated	100 sq. ft.
17. A/C shingle	Squares
Friction materials	
18. Drum brake lining (light-medium vehicle)	Pieces
19. Disc brake pads (light-medium vehicle)	Pieces
20. Disc brake pads (heavy vehicle)	Pieces
21. Brake block (heavy equipment)	Pieces
22. Clutch facings (all)	Pieces
23. Automatic transmission friction components	Pieces
24. Friction materials (industrial and commercial)	Pieces

Textiles	*Unit of measure
25. Cloth	Pounds
26. Thread, yarn, tap, roving, cord, rope, or wick	Pounds
Other products	
27. Sheet gasketing (other than beater-add)	Sq. yards
28. Packing	Pounds
29. Paints and surface coatings	Gallons
30. Adhesives and sealants	Gallons
31. Asbestos-reinforced plastics	Pounds
32. Insulation materials not elsewhere classified (Specify generic name)	(Specify)
33. Mixed or repackaged asbestos fiber	Short tons
34. Other (Specify generic name)	(Specify)

D. SECONDARY PROCESSOR PRODUCTION

Enter the following information for each type of end product that you shipped from your plant site. Classify end products and asbestos mixtures consumed according to the lists on this form.

End product shipped (Enter one end product per line) (1) Code number	Generic name	Total annual production (2) Year	Quantity	Unit of measure	Asbestos mixture consumed and form (Enter one mixture per line) (3) Code number	Generic name — Form	Function of asbestos in product (4)	Year	Annual consumption of asbestos mixtures (5) Quantity	Unit of measure	Delivered cost (Thousands of dollars)	Confidential Mark (X)
		1979						1979				
		1980						1980				
		1981						1981				
		1979						1979				
		1980						1980				
	☐ Continued	1981						1981				
		1979						1979				
		1980						1980				
	☐ Continued	1981						1981				

(6) Estimate the percentage of the total value shipped from the plant site reported here as secondary processor production in 1981 ——— %

Typical terms for products made from asbestos mixtures

Automotive and friction products
101. Drum brake lining (light-medium vehicle)
102. Disc brake pads (light-medium vehicle)
103. Disc brake pads (heavy vehicle)
104. Brake block (heavy equipment)
105. Clutch facings (all)
106. Automatic transmission friction components
107. Friction materials (industrial and commercial)
108. Custom automotive body filler
109. Transmissions
110. Mufflers
111. Radiator top insulation
112. Radiator sealant
113. Other (Specify generic name)

Appliances
114. Appliance, industrial and consumer (Specify generic name)

Construction products
115. Boiler and furnace baffles
116. Decorated building panels
117. A/C sheet
118. Flexible air conductor
119. Hoods and vents
120. Portable construction building
121. Roofing, saturated
122. Roof shingles
123. Wallboard
124. Waterproofing panels
125. Other (Specify generic name)

Clothing
126. Aprons
127. Boots
128. Gloves and mittens
129. Hats and helmets
130. Overgarters
131. Suits
132. Other (Specify generic name)

Floor coverings
133. Vinyl-asbestos floor tile
134. Asbestos-felt-backed sheet vinyl flooring

Electrical products and components
135. Cable insulation
136. Electronic motor components
137. Electrical resistance supports
138. Electrical switchboard
139. Electrical switch supports
140. Electrical wire insulation
141. Motor armature
142. Other (Specify generic name)

Fire and heat shielding equipment and components
143. Asc deflectors
144. Fire doors
145. Fireproof absorbent paper
146. Heat shields
147. Molten metal handling equipment
148. Oven and stove insulation
149. Pipe wrap
150. Stove lining, wood and coal
151. Stove pipe rings
152. Sleeves
153. Thermal insulation
154. Other (Specify generic name)

Gaskets
155. Sheet gasketing, rubber encapsulated beater addition
156. Sheet gasketing, rubber encapsulated compressed
157. Compressed sheet gasketing (other)
158. Metal reinforced gaskets
159. Automotive gaskets
160. Other (Specify generic name)

Marine equipment and supplies
161. Caulks, marine
162. Liners, pond or canal
163. Marine bulkheads
164. Other (Specify generic name)

Paints, coatings, sealants, and compounds
165. Asphaltic compounds
166. Automotive/truck body coatings
167. Buffing and polishing compounds
168. Caulking and patching compounds
169. Drilling fluid
170. Flashing compounds
171. Furnace cement
172. Glazing compounds
173. Plaster and stucco
174. Pump, valve, flange, and tank sealing components
175. Roof coatings
176. Textured paints
177. Tile cement
178. Other (Specify generic name)

Textile and felt products
179. Aluminized cloth
180. Rope or braiding
181. Yarn, lap, or roving
182. Wicks
183. Bags
184. Belting
185. Blankets
186. Carpet padding
187. Commercial/industrial dryer felts
188. Draperies
189. Drip cloths
190. Fire hoses

Textile and felt products — Con.
191. Ironing board pads and insulation
192. Mantles, lamp or catalytic heater
193. Packing and packing components
194. Piano and organ felts
195. Rugs
196. Tape
197. Theater curtains
198. Umbrellas
199. Other (Specify generic name)

Miscellaneous products
200. Aerial distress flares
201. Acoustical products
202. Ammunition wadding
203. Asbestos-reinforced plastic products
204. Ash trays
205. Baking sheets
206. Blackboards
207. Candlesticks
208. Chemical tanks and vessels
209. Filters
210. Grommets
211. Gun grips
212. Jewelry making equipment
213. Kilns
214. Lamp sockets
215. Light bulbs (all types)
216. Linings for vaults, safes, humidifiers, and filing cabinets
217. Phonograph records
218. Pottery clay
219. Welding rod coatings
220. Other (Specify generic name)

E. IMPORTATION OF ASBESTOS MIXTURES

Enter the following information for each type of asbestos mixture that you imported in 1981. Classify your imports according to the lists in section C or D.

Asbestos mixtures (Enter one mixture per line) (1) Code number	Generic name	Asbestos fiber content (if known) (2) Type of asbestos	Quantity (Per unit)	Year	Total annual imports (3) Quantity	Unit of measure	Value of imports (U.S. dollars)	Confidential Mark (X)
		☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				
	☐ Continued	☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				
	☐ Continued	☐ Chrysotile ☐ Anthophyllite ☐ Unknown		1979				
		☐ Crocidolite ☐ Tremolite		1980				
		☐ Amosite ☐ Actinolite	☐ Unknown	1981				

U.S. ENVIRONMENTAL PROTECTION AGENCY

REPORT OF COMMERCIAL AND INDUSTRIAL USES OF ASBESTOS
Continued

COMPANY NAME AND ADDRESS
(Same as reported in item 1 on page 1)

F. IMPORTATION OF ARTICLE(S) CONTAINING ASBESTOS COMPONENTS

Enter the following information for each article that you imported in 1981. Classify your imports according to the lists in section C or D.

Article name (Enter one article per line) (1)		Total annual imports (2)				Asbestos component(s) (Use one line per component) (3)	Confidential Mark (X)
Code number	Generic name	Year	Quantity	Unit of measure	Value (U.S. dollars)		
		1979					
		1980					
		1981					
		1979					
		1980					
		1981					
		1979					
		1980					
		1981					

G. EMPLOYEES

Record the number of employees at the reporting site in each of the categories below. Count each employee in one category only.

	Number of employees	Confidential Mark (X)
(1) TOTAL number of employees at plant site *(Sum of 2, 3, 4, and 5)*		
(2) Number of production employees		
(3) Number of employees in shipping, receiving, and moving		
(4) Number of maintenance employees		
(5) Number of other employees		

H. SUMMARY OF CURRENT WORKER EXPOSURES

This section requires you to report, by category of production workers, the arithmetic mean of the 8-hour time weighted average (TWA) and ceiling concentration exposure levels for all employees at the reporting site. Report for all employees for whom you have determined a TWA and according to each production line making the reported products. The instructions include a worksheet for making necessary calculations (see Appendix B).

End product (Enter name) (1)		Respondent activity (2)	Production work category (3)	Number of employees (4)	8 hr. time weighted average				Ceiling concentration level (Range) (9)	Confidential Mark (X)
Code number	Generic name				Arithmetic mean of detectable measurements (5)	Standard deviation (6)	Total number of measurements (filters) (7)	Number of non-detectable measurements (8)		
	Not applicable	**Miners and millers**	**Mine operations** (includes all employees working in mine, including transporters)							
			Mill operations (includes all employees working in production areas of mill)							
		Primary processors	**Fiber introduction** operations (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							
		Primary processors	**Fiber introduction operations** (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							
		Primary processors	**Fiber introduction operations** (includes blending, mixing, bag opening, fluffing, willowing, etc.)							
		Primary processors and secondary processors	**Wet mechanical operations** (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Dry mechanical operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)							
			Other production employees							

(10) Sampling and analysis methods

☐ Mark this box if you use the NIOSH method to sample airborne concentrations of asbestos fibers in the workplace and analyze measurements (DHEW (NIOSH) Pub. No. 79-127).

If you utilize other sampling and analysis methods, enter the appropriate codes for those methods listed in the instruction booklet under part I.

(11) Enter the lowest detectable level of the measurements that your company expects to attain by the sampling and analysis methods. (Measurements below this level should be considered as "nondetectable." for the purposes of this rule.)

I. MEASURING ASBESTOS EMISSIONS OR FIBER RELEASE

NPDES Permit number _____ | Date

☐ Yes, enclosed is a separate report for this section concerning measuring asbestos emissions. ☐ No separate report

EPA Form 7710-36 (6-12-82)

J. WASTE AND DISPOSAL

Enter the following information for each end product you report in section B(1), C, and D. If you cannot provide information by end product, provide information according to the form of waste (column 2).

End product (1) Code number	End product (1) Generic name	Form of waste (sludge, slurry, broke or scrap, baghouse fines, or specify other) (2)	Total annual quantity of asbestos waste (Short tons) (3)	Average percent asbestos (4)	Disposal site (5) Type of land disposal facility (See instructions) (a)	Disposal site (5) Location (b)	Disposal site (5) Ownership (c)	Disposal site (5) Permitted hazardous waste facility? (d)	Method of disposal (6)	Confidential Mark (x)
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		
	☐ End product report ☐ Form of waste report			%	☐ Surface impoundment ☐ Waste pile ☐ Land treatment ☐ Land fill ☐ Seepage facility ☐ Injection well	☐ On-site ☐ Off-site	☐ Company ☐ Private ☐ Municipal	☐ Yes ☐ No		

(7) You may describe in a separate enclosure any steps you take to ensure that waste does not release airborne fibers.

☐ Yes, enclosed is a separate description of waste disposal practices. ☐ No separate report

K. POLLUTION CONTROL EQUIPMENT

On separate lines enter information about each piece of air pollution control equipment used to control asbestos emissions at your plant site. ☐ Confidential

Item number (1)	Type of equipment (See code) (2)	Gas stream volume and temperature (3)	Equipment size (Baghouse and ESP only) (4)	Estimated collection efficiency (Percent) (5)	Normal operating schedule (Hrs./year) (6)	Quantity collected annually (Pounds) (7)	Source of emissions (8)	Stack or chimney? (9)	Special problems? (10)
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	
		Volume Temperature	Square feet ☐ N/A	% ☐ Designed ☐ Actual	Hrs./yr.	Pounds ☐ Designed ☐ Actual		☐ Yes ☐ No	

(11) Estimate the percent of plant exhaust air that is treated by the equipment listed above ______ %

Continuation of item answers

EPA Form 7710-36 (6-12-82)

BILLING CODE 6560-50-C

Instruction Booklet—Reporting Commercial and Industrial Uses of Asbestos, EPA Form 7710-36

I. Introduction and Reporting Schedule

A. Introduction

These instructions are for companies that mine and/or mill commercial asbestos, or process or import an asbestos product, and are required to submit EPA Form 7710-36 under 40 CFR Part 763, Subpart D. Data must be reported to the extent that they are known to or reasonably ascertainable by the submitter based on factual information that either is available in company files, or can be obtained without unreasonable burden or cost. Importers must report information in their possession, but need not contact foreign manufacturers for missing information.

1. *Fill in all blocks.* Fill in all blocks in the portions of the form that must be completed. Write "N/A" (not applicable) in large, bold letters on the first line of any section that does not have to be completed.

If data for a portion of the form that must be completed are not available, consult part II of these instructions, "Missing Information."

EPA will check all forms for completeness. Incomplete forms may be returned for completion. If only a few items are incomplete, EPA may call the designated Technical Contact to determine the correct answer rather than return the form.

2. *Relevant Definitions.* Reporting requirements are determined by the company's asbestos activity in 1981 (i.e., miner and/or miller, importer of bulk asbestos, primary processor of asbestos, secondary processor of asbestos, importer of asbestos mixtures, or importer of articles containing asbestos components). Definitions for reporting activities and other terms used in this form may be found in Appendix A.

3. *Appropriate Number of Forms.* A separate form must be submitted for each *site.* For example, a miner and/or miller at one site who is a primary processor at a different site must submit a form for each site.

All asbestos activities conducted at each site must be reported. A primary processor who also imports asbestos at a single site must report both the primary processing and importing activities on the same form.

4. *Additional Space.* If additional space is needed to report all required information, responses can be entered on a reproduction of the pertinent portion of the form and the continuation should be noted on that part of the form.

B. Portions of the Form To Complete and Reporting Schedule

1. *Miners and/or Millers.* Miners and/or millers must complete parts A, B(1), G, H, I, J, and K of the form. Complete B(3) if applicable. Report for each plant site on a separate EPA Form 7710-36 and submit within 90 days of the effective date of the rule.

2. *Primary Processors of Asbestos.* Primary processors must complete parts A, C, G, H, I, J, and K of the form. Complete B(3) if applicable. If a facility processes an asbestos mixture that is made at a different plant site, part D must also be completed. Report for each plant site on a separate EPA Form 7710-36 within 90 days of the effective date of the rule.

3. *Secondary Processors of Asbestos.* Persons who are *solely* secondary processors must submit EPA Form 7710-37, "Reporting Secondary Processing and Importation of Asbestos Mixtures" within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A, D, G, H, I, J, and K of the form for submission within 90 days of receiving notification.

4. *Importers of Bulk Asbestos.* Importers of Bulk Asbestos must complete *at least* parts A and B(2) of the form. Complete B(3) if applicable. Report all activities that involve asbestos on EPA Form 7710-36 within 90 days of the effective date of the rule.

5. *Importers of Asbestos Mixtures.* Importers of Asbestos Mixtures must submit EPA Form 7710-37 "Reporting Secondary Processing and Importation of Asbestos Mixtures," within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A and E of the form and submit within 90 days of receiving notification.

6. *Importers of Article(s) Containing Asbestos Component(s).* Importers of Article(s) Containing Asbestos Component(s) must submit EPA Form 7710-37 "Reporting Secondary Processing and Importation of Asbestos Mixtures," within 60 days of the effective date of the rule. If the company is selected and notified by certified letter to complete EPA Form 7710-36, complete parts A and F of the form and submit within 90 days of receiving notification.

II. Missing Information

It is important to fill in all blocks in the portions of the form that must be completed. If the required information either cannot or need not be provided, enter one of the notations described below. Write "N/A" (not applicable) in large bold letters on the first line of any section that is not required. Only use "0" to report a quantity of zero.

Enter the following notations if the requested data are unknown, previously submitted to EPA or CPSC, or submitted as a corporate report.

UNK—The requested data are *unknown* and not reasonably ascertainable; or, not in the possession of the importer. This may be the case for information from a specific year or about a specific type of data that is required.

CPSC—The requested data have been previously reported to the Consumer Product Safety Commission (CPSC) in response to the December 22, 1980 Federal Register notice "Consumer Product Containing Asbestos; General Order for Submission of Information," (45 FR 84384). Use this notation only for the specific items of information that were submitted to CPSC. *Do not* use this notation in lieu of reporting of CPSC was instructed not to share the submitted information with EPA at the time of response to the CPSC General Order.

CORP—The requested data have been submitted for sections B(2) and B(3) (importation and exportation), in a corporate consolidated report. Inform the plant site management that a corporate consolidated report has been submitted and instruct those plant site(s) to enter "CORP" in sections B(2) and B(3).

EPA—The requested data have already been submitted to EPA in the format of the reporting form as proposed or promulgated.

III. Specific Instructions for Form 7710-36

A(1). Respondent Identification

1. Enter company name, and name and complete address of plant site.

2. Enter name, job title, and telephone number of the principal technical contact person to be contacted by the EPA for answers to any questions about the submitted form.

3. Miners must record the mine identification number assigned by the Mining Safety and Health Administration.

4. Enter name and address of the parent corporation responsible for fiscal management of the reporting site.

5. Enter the total number of years asbestos has been manufactured or processed at this plant site, through the date of this report.

A(2). Respondent Activity

Review the definitions in Appendix A of these instructions to ascertain required reporting activity(ies). Check the appropriate activity(ies) that is performed at this site. Complete the portions of the form listed next to the activities checked.

For example, a primary processor who makes an asbestos mixture and then processes the asbestos mixture at the same site to make a different end product should report the production of the final end product in part C. Only complete part D of the form if the facility processes an asbestos mixture that is made elsewhere.

A(3). Confidential Business Information

Any reported information may be claimed as confidential business information. When submitting the form, mark (X) in the space provided on each line of the form that contains confidential information. Additionally, an authorized company official must sign the "Certification for Claims of Confidentiality" to certify that the four statements on the form apply to all information claimed as confidential.

B(1). Production of Bulk Asbestos

Enter, in short tons, the amount of bulk asbestos produced (mined or milled), in 1979, 1980, and 1981.

B(2). Importation of Bulk Asbestos

Enter, in short tons, the amount of bulk asbestos imported in 1979, 1980, and 1981. Report all imports entering the U.S. Customs territory that are declared under Tariff Schedule of the United States, Annotated (TSUSA) Number 518.1110–518.1160. Mark in the appropriate box the source of this information.

B(3). Exportation of Bulk Asbestos

Enter, in short tons, the amount of bulk abestos exported in 1979, 1980, and 1981. Mark in the appropriate box the source of this information.

C. Primary Processor Production

Individually list the product subcategories made and shipped from the plant site in 1979, 1980, and 1981 that incorporate bulk abestos as a starting material. Read instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *End Product Shipped.* Locate on the list of "Asbestos Mixture Product Subcategories" the most specific name that describes the end product(s) shipped from the plant site. Enter the corresponding code number for each product subcategory being reported. If the listed product subcategory name is not adequately descriptive, write in a generic name next to the code number. If the product is not listed, write in the appropriate code for "other" and a generic name for the product. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Type of Asbestos Fiber Consumed.* Mark (X) the fiber type(s) that is, or has been, used in production of reported product subcategory. Use one block for each fiber type incorporated into each product subcategory. If more than one type of fiber(s) is used for a product, mark (X) the additional fiber in the next block and mark (X) the continuation box in column 1. *Do not* list the same product subcategory twice.

(3) *Quantity of Asbestos Consumed.* For each type of asbestos, enter, in short tons, quantity consumed in 1979, 1980, and 1981.

(4) *Total Annual Production.* Record the total annual production quantity of each reported product subcategory in 1979, 1980, and 1981. Production quantities will be expressed in the units of measure indicated on the form next to the listed end product, as used by the Bureau of Census. If census units are not applicable, report production in short tons.

(5) *Value Shipped.* Record the total annual value shipped (in thousands of U.S. dollars) for each reported product subcategory in 1979, 1980, and 1981. These figures must be separated to show domestic sales and export sales (i.e., sales distributed outside the U.S. Customs Territory). If the breakdown is unknown, report total sales as "Domestic" sales, and write "UNK" under "Exports."

The valuation of products shipped should be based on the net selling value, f.o.b. plant, after discounts and allowances, and exclusive of freight charges and excise taxes.

When reporting products transferred to other establishments within the same company, the shipping plant should assign the full economic value to the transferred products. Include *all* direct costs of production and a reasonable proportion of all other costs and profits.

(6) *Percentage of Total Value Shipped.* Estimate the percentage of end products shipped that reflect primary processing of asbestos in 1981.

D. Secondary Processor Production

Individually list the product subcategories made and shipped from the plant site in 1979, 1980, and 1981 that incorporated an asbestos mixture as a starting material. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *End Product Shipped.* Locate on the list of "Typical Terms for Products Made from Asbestos Mixtures" the most specific subcategory name that describes the product. Enter the corresponding code number for each product subcategory being reported. If the product name listed is not adequately descriptive, write in a generic name next to the code number. If the product is not listed, enter the appropriate code for "other" and write in a generic name for the product. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Total Annual Production (Quantity by Census Unit of Measure).* Record the total production of the reported product subcategory at this plant site in 1979, 1980, and 1981. Production quantities should be reported in the unit of measure used by the U.S. Department of Commerce, Bureau of the Census, for the 1977 Census of Manufacturers.

(3) *Asbestos Mixture Consumed and Form.* Locate and enter from the list of "Asbestos Mixture Product Subcategories" the code number of the asbestos mixture processed to produce the product subcategory. If the material processed is not listed, then enter the appropriate code for "other" and write the generic name of the asbestos material you process. Indicate the form in which the asbestos starting material is purchased (e.g., roll of paper, 3'x5' sheets, reams of 8"x11" sheets).

Use one block for each asbestos mixture incorporated into the product subcategory. If there is more than one asbestos mixture per product subcategory, list the mixture(s) in the next block(s) and mark (X) the continuation box in column 1. *Do not* list the same product subcategory twice.

(4) *Function of the Asbestos in Product.* Briefly describe the function of the asbestos in the product. Examples of possible asbestos functions are: rot resistance, heat insulation, fire shield, electrical insulation, dimensional stability, filler, or tensile strength.

(5) *Annual Consumption of Asbestos Mixtures.* Record the total annual quantity and specify Census Bureau unit of measure and the total annual cost (in thousands of U.S. dollars) of the asbestos mixtures consumed in 1979, 1980, and 1981.

The value of the materials consumed should be based on the delivered cost, i.e., the *amount paid or payable* after discounts and including freight and other direct charges incurred in acquiring the materials. Charges include purchases, transfers from other establishments of the company, and withdrawals from inventories.

Materials transferred to the plant site from other plants within the company should be assigned their full economic value, as assigned by the shipping plant, plus cost of freight and handling charges.

(6) *Percentage of Total Value Shipped.* Estimate the percentage of end products shipped that reflect secondary processing of asbestos in 1981.

E. Importation of Asbestos Mixtures

Individually list the asbestos mixtures imported to the plant site in 1979, 1980, and 1981. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *Asbestos Mixture.* Locate on the list of "Asbestos Mixture Product Subcategories" the most specific name that describes the mixture imported. Enter the corresponding code number of each product subcategory being reported. If the name of the product subcategory is not adequately descriptive, write in a generic name next to the code number. If the imported product subcategory is not listed, enter the appropriate code for "other" and write in a generic name for the product. List each product subcategory on a separate line. *Do not* enter a trade name as a generic name. Do not report anything more specific than a product subcategory.

(2) *Asbestos Fiber Content.* Mark (X) the type of asbestos fiber in the imported asbestos mixture and enter the total quantity of asbestos per unit of the mixture (the unit used to report quantity imported). The quantity of asbestos should be reported in *pounds.* If these data are not available, mark (X) "UNK."

Use one block for each type of fiber that is in the imported mixture. If the mixture contains more than one type of asbestos fiber, list the additional fiber(s) in the next block(s) and note the continuation in column 1. *Do not* list the same mixture twice.

(3) *Total Annual Imports.* Record the total annual quantity of each listed product subcategory imported in 1979, 1980, and 1981.

Quantities will be expressed in the units of measure used by the U.S. Bureau of the Census or according to the unit used to report importation to the U.S. Customs Service.

Record the total annual value imported (U.S. dollars) for each product in 1979, 1980, and 1981. This figure can be drawn from the U.S. Customs Service entry forms as the "Entered Value in U.S. Dollars" or "Value."

F. Importation of Article(s) Containing Asbestos Component(s)

Individually list the articles containing an asbestos component that were imported in 1979, 1980, and 1981. Only report information relating to imported product subcategories listed under "Typical Terms for Products Made from Asbestos Mixtures." If the component was reported on EPA Form 7710–37 during Phase 1, use the same code(s) and generic name(s) as reported on that form. Read the instructions for items 1, 2, and 3 before completing this section to ensure sufficient space for entries.

(1) *Article Name.* Locate on the list of "Typical Terms for Products Made from Asbestos Mixtures" the most specific name that describes your product. If the listed product name does not adequately describe your product, write in a generic name next to the code number. List each product on a separate line. If the imported product is not listed, enter the appropriate code number for "other" and write in a generic name. *Do not* enter a trade name as a generic name.

(2) *Total Annual Imports.* Record the total number of units that were imported in 1979,

1980, and 1981. Quantities will be reported in the unit of measure that was used to declare the merchandise upon entry into the U.S. or by the U.S. Bureau of Census for the 1977 Census of Manufacturers. Enter the value of the imported merchandise in U.S. dollars.

(3) *Asbestos Component(s).* List all asbestos components contained in the imported article by name, or by describing the mixture making up the component. Use one block for each asbestos component. If the imported article contains more than one asbestos component, list the component in the next block and note the continuation in column 1. *Do not* list the same article twice.

G. Employees

Classify all employees as of January 1981 into the following categories. In items 2–5, COUNT EACH EMPLOYEE IN ONLY ONE CATEGORY. In this section, report numbers of individuals without regard to the number of hours worked.

(1) *Total Number of Employees.* Enter the total number of employees (the sum of items 2, 3, 4, and 5) who worked at the reporting plant site as of January 1981. If you employed seasonal workers in 1981, add the number of those workers to the total.

(2) *Number of Production Employees.* Enter the number of production employees who work in areas where ASBESTOS IS MANUFACTURED OR PROCESSED. Do not include plant site production employees who work in separate areas where no asbestos fiber or asbestos product is processed. This number must equal the total number of employees reported in Section H, for all product lines.

(3) *Number of Shipping, Receiving, and Moving Employees.* Enter the number of employees involved with shipping, receiving, or moving asbestos fiber or asbestos-containing products.

(4) *Number of Maintenance Employees.* Enter the number of maintenance employees who perform maintenance tasks in work areas where asbestos fiber, asbestos products, or asbestos waste are processed, stored, or moved.

(5) *Number of Other Employees.* Enter the number of other employees at the location that are not counted in items 2–4.

H. Summary of Current Worker Exposures

Report, by category of production workers, the arithmetic mean of the 8-hour time weighted average (TWA) exposure level for all employees at the reporting site for whom a TWA has been determined. Appendix B describes how to perform the calculations and includes a worksheet.

Summarize Only *Existing Monitoring Data;* Additional Monitoring Is Not Required

Submit a single TWA value (arithmetic mean) to summarize existing monitoring data that will describe current exposure levels that employees in general production categories may experience while working on each production line. Summarize and report monitoring data separately for workers on the production line for each end product subcategory that has been reported as either "Primary Processor Production" (part C) or "Secondary Processor Production" (part D). Miners and millers, must provide a single, separate TWA value for the mine and for the mill.

For each *End Product Subcategory,* enter the number of workers who perform the production operations listed below. Only count employees who were counted as production workers in item 2 of part G of the form. Each employee is to be counted *only one time,* in the operation and product line that is the employee's primary assignment.

After grouping the 8-hour TWAs, follow the detailed instructions in Appendix B to find the mean, standard deviation, number of measurements, and ceiling ranges for each group.

Note.—The sum of all production employees listed in column 4 *must equal* the number of production employees entered in item 2 of part G.

(1) *End Product.* Primary or secondary processors must enter the same code number(s) and generic name(s) they listed in part C or D of the form. Miners and/or millers *do not* complete this block.

(2) *Respondent Activity.* Determine applicable category of activity.

(3) *Production Work Category.* Divide production employees into the Production Work Categories for each end product subcategory. Count mine workers under *Mine Operations* and mill workers under *Mill Operations.*

Fiber Introduction Operations are operations where bulk (raw) asbestos is mixed with or added to a combination of other materials. Primary processors will list employees who handle bulk or raw abestos fiber. Secondary processors do not use bulk asbestos as a starting material.

Wet Mechanical Operations are operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered, and the asbestos component is wetted to reduce the release of airborne asbestos fiber. This category includes such activities as: machining, sawing, drilling, cutting, grinding, or pulverizing. Count employees whose principal job is to control or work with the tool or machinery performing the operation. Count all asbestos textile workers involved with wet operations here, whether involved in spinning, twisting, or weaving operations.

Dry Mechanical Operations are operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered without any intentional wetting of the material during the operation. This category includes activities such as: machining, sawing, drilling, cutting, grinding, or pulverizing. Count employees whose principal job is to control or work with the tool or machinery performing the operation. Count all asbestos textile workers in dry operations here, whether involved in spinning, twisting, or weaving operations.

Other Production Employees are production employees involved in operations that require handling of asbestos fiber or materials in a manner not covered in the operations described in the other categories. This category will include workers who perform an operation that involves handling an asbestos mixture, such as bonding asbestos-felt-backing for vinyl sheet flooring or injecting asbestos-reinforced plastic into a mold. Other production workers who are to be counted in this category include (but are not limited to) employees who take products off a production line, assemble parts, oversee drying or rolling operations, or inspect, weigh, or package asbestos mixtures or asbestos-containing products.

(4) *Number of Employees.* Enter next to the appropriate job classification the number of employees working in jobs meeting the general descriptions provided. Count employees *only one time* and only under the job description that best describes their primary duties.

(5) *Arithmetic Mean of Detectable Measurements.* Locate monitoring data for any employees counted in column 4 and group those monitoring data according to the employee's general job classification. Determine the arithmetic mean of those detectable TWA values for each work category. Calculate the mean only to the nearest one-hundredth (e.g., 0.05). The arithmetic mean is the sum of the time-weighted averages divided by the number of time-weighted averages. (See Appendix B for instructions and worksheet for determining the arithmetic mean.) If there are no measurements for workers in a particular work category, write in "No measurements."

(6) *Standard Deviation.* Enter the standard deviation for each arithmetic mean you calculate in column 5. (See Appendix B for instructions and a worksheet for determining the standard deviation.)

(7) *Number of Measurements Used.* For each work category, enter the total number of actual observations (filters) used to determine all of the employee's TWAs in the category. This includes the number of all non-detectable measurements.

(8) *Number of Non-detectable Measurements.* For each work category, enter the number of measurements that are below detectable levels. (Non-detectable levels may not be greater than 0.1 f/cc.)

(9) *Ceiling Concentration Level.* For each work category, enter the range of ceiling concentration levels that were determined. Provide the low and high measurements.

(10) *Sampling and Analyses Methods.* If the company used the NIOSH methodology to sample airborne concentrations of asbestos fibers in the workplace and to analyze measurements [DHEW (NIOSH) Pub. No. 79–127], check the corresponding box on the form.

If the company used other sampling and analysis methods, enter the appropriate codes for those methods listed in the next section of these instructions.

The reporting company has the option to describe in an attachment any additional information that will better describe work practices or other measures instituted to reduce the levels of airborne fibers or to protect workers from exposure to asbestos. Attach any additional materials to this form at the time of submission.

(11) Enter the lowest detectable level of the measurements the company expects to attain by the sampling and analysis methods. (Measurements below this level are considered "non-detectable" for the purposes of this rule.)

I. Measuring Asbestos Emissions or Fiber Release

If the plant site has applied for a water effluent discharge permit (NPDES Permit), provide the application date and the permit number that was assigned.

Summarize and report separately the results of any measurements or monitoring performed to determine the amount of asbestos fiber released during the production, use, or disposal of asbestos fiber or asbestos products (other than already reported in part H of this form). If attaching any such information for this section, check the "yes" box on the form. If not, mark "X" for no separate report. Where possible, the measurements should characterize the type of fibers found and the fiber size distribution, and should be reported according to the following ranges.

Reports submitted in response to this section should describe the methodologies used to perform any tests, to gather samples, and to analyze samples. If this information has been previously submitted to a Federal agency, do not report again here, but indicate the date and to whom the information was sent, and briefly describe the nature of the information. Where possible, summarize the sampling and analytical methodologies according to the terms and abbreviations listed below.

Fiber size distributions	Analysis methodologies
<1.0	Optical Microscopy.
1.0–2.0	PC Phase Contrast Microscopy.
2.0–3.0	PM Polarizing Microscopy.
3.0–4.0	DS Dispersion Staining.
4.0–5.0	OM Other optical microscopy techniques (specify).
5.0–10.0	
10.0–20.0	Electron Microscopy.
20.0–30.0	TEM Transmission Electron Microscopy.
<30.0	
	SEM Scanning Electron Microscopy.
Sampling Methodologies	
	ED Electron Diffraction.
	XRS X-Ray Spectrometry.
K Konimeter	EM Unknown electron microscopy results.
TP Thermal Precipitator	
I Impinger	O Any other analysis methodology (Provide specifications).
MI Midget Impinger	
MF Membrane Filter	
EPA Provisional Methodology	

EPA—"Electron Microscope Measurement of Airborne Asbestos Concentration—A Provisional Methodology," EPA-600/2-77-178 (Revised June 1978).

J. Waste and Disposal

Entries in this section will account for the waste that is not recycled and results from the production of each type of end product subcategory reported. The percentage of the total waste from the plant site that results from the production of each end product subcategory may be estimated. Report separately the data for each end product subcategory. If unable to determine quantities by product subcategory, report total quantities disposed of for each form of waste.

(1) *Product Line.* Enter the product subcategory code (and generic name if used) for each end product subcategory reported in parts B(1), C, or D. Miners and/or millers need only list the type of bulk asbestos fiber reported in section B(1). If unable to determine wastes by end product subcategory, report according to the form of the waste (see below); enter the name(s) and code(s) from parts C and D. Mark (X) in the appropriate box to indicate that the data is either an "End Product Report" or a "Form of Waste Report."

(2) *Form of Waste.* Record the form of the waste either after completion of the processing or as it leaves the plant site. Report asbestos collected in control devices, such as baghouse fines, on a separate line.

(3) *Total Annual Quantity of Asbestos Waste (Short Tons).* Enter the total quantity, in short tons, of asbestos waste generated by each reported end product production line in 1981. Asbestos waste is a waste product that contains asbestos as some of the total waste. Do not report quantities of waste recycled or reprocessed.

(4) *Average Percent Asbestos.* Record in short tons the average percentage of asbestos (by weight) in the total quantity of asbestos waste. This figure may be an estimate based on previous experience or an extrapolation of production mass balance figures.

(5) *Disposal Site(s).* (a) Type of Land Disposal Facility. Mark (X) one of the following types of land disposal facilities or the asbestos waste of each end product subcategory or form of waste. See the February 5, 1981, **Federal Register** (46 FR 11126) for comprehensive definitions of the types of facilities.

- *Surface Impoundments*—facilities at which liquid wastes or other liquids are impounded or held. Surface impoundments are generally earthen structures designed to hold an accumulation of liquids or wastes containing free liquid.
- *Waste Piles*—facilities at which wastes, usually in a solid state, are placed on the land for storage or treatment.
- *Land Treatment*—facilities at which wastes (usually in a solid, semi-solid, semi-liquid, or liquid state) are spread on the ground for the purpose of treatment.
- *Landfills*—facilities at which wastes, usually in solid or semi-solid state, are placed into or on the land for permanent disposal.
- *Seepage Facilities*—facilities at which wastes (usually in a liquid, semi-liquid, or semi-solid state) are placed into or on the land for storage, treatment, or disposal. A seepage facility is designed with the objective of discharging liquids into the land. There are four types of seepage facilities:

  —seepage lagoons
  —drying beds
  —seepage pits
  —seepage beds

- *Injection Wells*—facilities at which wastes in a fluid (usually liquid) state are injected into the land under a pressure head greater than the pressure head of the ground water into or above which they are injected for disposal.

(b) *Location of Disposal Facility*—For each end product subcategory (or form of waste), mark (X) whether wastes are disposed of at this plant site (on-site) or at another site (off-site).

(c) *Ownership of Disposal Facility*—For each end product subcategory (or form of waste), mark (X) whether this disposal facility is owned by reporting company (company), another private company (private), or a municipality (municipal).

(d) *Permitted Hazardous Waste Facility*—For each product subcategory (or form of waste), mark (X) whether the disposal facility is permitted under any applicable State or Federal hazardous waste regulation.

(6) *Method of Disposal.* Briefly describe the specific methods used to dispose of asbestos waste. For example, if you wet the waste and place it in a bag or drum prior to disposal, that should be noted here.

(7) *Additional Information.* Submit any additional information to describe any steps taken during waste disposal to reduce the release of airborne asbestos fibers. If enclosing a separate description, check "Yes" on the form; if not, check "No" in the space provided.

K. Pollution Control Equipment

In this section, provide information on all air pollution equipment located at the plant site to control or remove airborne asbestos fiber. List each piece of equipment on a separate line on the form, even though identical units may be used at the plant site. Use the codes listed in this section for each piece of equipment being reported. For additional space, fill in and attach additional copies of the form. If the company has submitted portions of the required data to EPA previously and the data are still current, enter "EPA" in place of those data, and reference the address where the data were sent and the date they were sent.

(1) *Item Number.* Number each piece of equipment consecutively (one through the total number of pieces of equipment).

(2) *Type of Equipment.* For each item number, enter the appropriate abbreviation from the following list.

- Baghouse (BH)
  - —Reverse Air (RA)
  - —Pulse Jet (PJ)
  - —Shake (S)
  - —Other (O)

For example, if the baghouse used is equipped for both reverse air and shake cleaning, enter (BH) (RA) (S).

- Scrubber (S)
  - —Venturi (V)
  - —Impingement (I)
  - —Spray (SP)
  - —Other (O)

If the scrubber used is the venturi type, also enter the pressure drop in inches of water in parentheses. For example, if the range of pressure drop, is 40–60 inches, enter (S) (V) (40–60).

- Electrostatic Precipitator (ESP)
- Cyclone (C)
- Multiple Cyclone (MC)
- Other (O)

(3) *Gas Stream Volume and Temperature.* For each piece of equipment, enter the gas volume (in cubic feet per minute) and the operating temperature (in °F). Use actual data for these entries, although estimates or design figures may be used if actual data are unavailable. Ranges (ex: 8,000–10,000 ACFM at (40–180 °F)) are also acceptable.

(4) *Equipment Size.* If electrostatic precipitators and/or baghouses are used, enter the total square feet of collecting surface area. For all other types of equipment mark (X) "N/A."

(5) *Estimated Collection Efficiency.* Enter the collection efficiency (percent), or an estimate of this value, of each piece of equipment. Mark (X) either design (D) or actual (A) to indicate basis for response.

(6) *Normal Operating Schedule.* Enter the normal number of operating hours either actual or estimated for each piece of equipment during 1981.

(7) *Quantity Collected Annually.* Estimate the quantity of material in pounds that is (or would be, given the design of the equipment) collected annually by each piece of equipment in 1981. Include all asbestos and non-asbestos materials in the total. If possible, estimate the percent (by weight) of asbestos in the collected material. Mark (X) either design (D) or actual (A) to indicate basis for response.

(8) *Source of Emissions.* Enter a brief description of the source of the emissions such as work area exhaust ventilation, curing oven, mixer, various, etc.

(9) *Stack or Chimney.* Indicate whether the air pollution control device discharges to a stack or chimney; check "Yes" or "No."

(10) *Special Problems.* If there is a special problem with particulate collection or with any specific piece of equipment, discuss it in the space provided. Be sure to indicate which piece of equipment is being discussed.

(11) Estimate the percent of plant exhaust air that is treated by the plant site's pollution control equipment.

Appendix A

Definition of Terms

Several terms are used throughout the reporting form and the instruction booklet to describe the different kinds of asbestos products and how to report them.

Asbestos Mixture: a mixture which contains bulk asbestos or another asbestos mixture as an intentional component. An asbestos mixture can be utilized as a finished product or incorporated into other products.

Bulk Asbestos (or raw asbestos): any quantity of asbestos fiber of any type or grade, or combination of types of grades, that is mined or milled with the express purpose to obtain asbestos. The term does not include asbestos that is produced or processed as a contaminant or an impurity. Asbestos is a group of naturally occurring, inorganic, highly fibrous, silicate minerals, which easily separate into long, thin, flexible fibers when crushed or processed. Included in the definition are the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

End Product: the product subcategory that is either shipped from the reported site or imported into the United States.

Generic Name: a term that describes the coded product subcategory better than the subcategory name given on the form. If the product subcategory name on the form is adequate, use it.

Importer: a person or facility importing asbestos, in bulk form or as part of a mixture or article, into the customs territory of the United States. This definition includes:

- The person liable for the payment of any duties on the merchandise, or
- An authorized agent on his behalf (as defined in 19 CFR 1.11). Importer also includes, as appropriate:
  - —The consignee;
  - —The importer of record;
  - —The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20; or
  - —The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the United States consists of the 50 states, Puerto Rico, and the District of Columbia. When two or more persons meet the same definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, should report.

Note.—If reporting company purchased in the United States an asbestos product that originated outside the United States, do not report as an importer.

For reporting purposes, there are several classes of importers:

- —An *Importer of Bulk Asbestos* imports bulk asbestos into the customs territory of the United States. Imported bulk asbestos is declared to the United States Customs Service upon entry as Tariff Schedule of the United States, Annotated, (TSUSA) numbers 518.1110–518.1160. Importers need report information only to the extent that the information is in their possession.
- —An *Importer of Asbestos Mixtures* imports asbestos mixtures into the customs territory of the United States. Imported mixtures include, but are not limited to, merchandise declared to the United States Customs Service upon entry as Tariff Schedule of the United States, Annotated, numbers (TSUSA Number) 518.2–518.5, or other TSUSA Numbers that may pertain to asbestos mixtures.
- —An *Importer of Article(s) Containing Asbestos Component(s)* imports an article that contains one or more asbestos components.

Miner and/or Miller of Asbestos: a person who either mines or mills asbestos. Mined or extracted asbestos-containing ore is further milled to produce bulk asbestos. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore.

Primary Processor of Asbestos: a person who processes bulk asbestos to makes an asbestos mixture or a product that contains asbestos. A primary processor who make an asbestos mixture and then processes the asbestos mixture at the same site to make a different end product should report production of the final end product. Primary processing includes the mixing or repackaging of raw asbestos fiber.

Product Subcategory: the type of asbestos mixture or the type of end product listed and numbered on the form.

Secondary Processor of Asbestos: a person who processes an asbestos mixture that is then incorporated into that person's end product. Secondary processors use asbestos mixtures that are made at a site other than the site being reported. For instance, asbestos millboard may be purchased by a secondary processor, who could cut that millboard and incorporate it into an appliance.

Appendix B

How To Compute Summaries of Monitoring Data—Instructions and Worksheets

These instructions describe how to compute the arithmetic mean and standard deviation of the TWA values for each category of employees counted in column 4 of part H of the form. It is probably easier to compute the figures by working through one line at a time. For example, a primary processor who has employees working in the fiber introduction area should locate all monitoring data for those employees, and work through question 10 before beginning computations for the next production work category for that end product. A worksheet is attached to these instructions; after completing it, transfer your computations to part H of the form.

I. To compute the "mean" for the TWA values for a production work category, first list all of the TWA values for employees counted in the category. Do not include non-detectable TWA values in the following calculations.

For example, assume the following TWA values (listed in column A) for a production work category:

No.	TWA values	Squares of column (A)
1.	1.00	1.00
2.	1.50	2.25
3.	0.50	0.25
4.	1.75	3.06
5.	1.25	1.56
	6.00	8.12

After listing the TWA values in column (A) on the worksheet, square each value and enter the *square* in column (B) on the worksheet. The squares are used later to compute the standard deviation. Sum both columns.

II. Next, determine the number (N) of values. In this example, N=5.

III. The "mean" is the sum of the TWA values in column A divided by the number of values (N).

In this example:

$$\text{Mean} = \frac{\text{Sum of TWA Values}}{N} = \frac{6.00}{5} = 1.20$$

IV. To calculate the "standard deviation" of these values, first compute the "variance" according to the following formula.

In this example:

$$(V) = \frac{1}{N-1} \times \left[\text{Sum of Column B} - \frac{(\text{Sum of Column A})^2}{N}\right]$$

$$= \frac{1}{5-1} \frac{[8.12-(6.0\times 6.0)]}{5}$$

$$= \tfrac{1}{4}\,[8.12-7.2]$$

$$= \frac{.92}{4}$$

$$V = .23$$

V. Finally, the standard deviation (SD) is the square root of the variance.

In this example:

$$SD = \sqrt{V}$$

$$= \sqrt{.23}$$

$$SD = 0.48$$

The arithmetic mean is entered in column 5 on the form, and the standard deviation is entered in column 6 on the form.

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Worksheet

I. No.	(A) TWA Values	(B) Squares of Column (A)
1.		
2.		
3.		
4.		
5.		
Total	_____	_____

II. Number of TWA values (N) = _____

III. $\text{Mean} = \frac{\text{Sum of Column A}}{N}$

IV. $\text{Variance (V)} = \frac{1}{N-1}\left[\text{Sum of Column B} - \frac{(\text{Sum of Column A})^2}{N}\right]$

$= \frac{1}{\square}\left[\square - \frac{\square^2}{N}\right]$

$=$ _____

V. Standard Deviation (SD) $= \sqrt{V} = \sqrt{}$

$=$ _____

§ 763.77 Reporting secondary processing and importation of asbestos mixtures.

The following EPA Form 7710–37, Reporting Secondary Processing and Importation of Asbestos Mixtures, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is in the possession of the respondent. Importers must report imported products only if the imported product is listed on this form.

(a) EPA Form 7710–37 (8–80)

BILLING CODE 6560–50–M

EPA

US ENVIRONMENTAL PROTECTION AGENCY

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

PART I – COMPANY INFORMATION

COMPANY NAME	FOR EPA USE ONLY	
ADDRESS *(Street, City, State & ZIP Code)*	TECHNICAL CONTACT	TELEPHONE NO.
	IMPORTER ☐ PRINCIPAL ☐ AGENT	

PART II – SECONDARY PROCESSOR END PRODUCT(S)

From the list in Section I, enter the asbestos end product produced. Opposite each product, list the asbestos mixture that you process, and the quantity of each mixture that you consumed in 1981.

END PRODUCT(S)		ASBESTOS MIXTURE(S)		QUANTITY OF ASBESTOS MIXTURE CONSUMED	
CODE	GENERIC NAME	CODE	GENERIC NAME	QUANTITY	UNIT OF MEASURE

PART III – IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING ASBESTOS COMPONENTS

List the asbestos mixture(s) or article(s) that you import and the quantity of each item that you imported in 1981. Opposite each item, enter a description of the asbestos component in the mixture or article.

ASBESTOS MIXTURE(S) OR ARTICLE(S)		QUANTITY OF ASBESTOS MIXTURE(S) OR ARTICLE(S) IMPORTED		DESCRIPTION OF ASBESTOS COMPONENT(S) IN ARTICLE
CODE	GENERIC NAME	QUANTITY	UNIT OF MEASURE	

CERTIFICATION FOR CLAIMS OF CONFIDENTIAL BUSINESS INFORMATION

An authorized company official may claim any information reported on this form as confidential business information. To do this, the confidential information must be clearly circled with a red marker. In addition, an authorized company official must sign below to certify the truth and accuracy of the following four statements, which apply to all information that is claimed.

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.
2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding) without my company's consent.
3. The information is not publicly available elsewhere.
4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

SIGNATURE OF AUTHORIZED OFFICIAL	DATE

EPA Form 7710-37 (10-81)

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

INSTRUCTIONS

This form is to be completed by persons who, in 1980, were secondary processors of asbestos or importers of asbestos mixtures or articles that contain asbestos components. See "Reporting Commercial and Industrial Uses of Asbestos", 40 CFR Part 763, Subpart D, for a full description of the reporting requirement and reporting schedule.

If additional space is needed, you should use additional copies of this form.

WHO MUST COMPLETE EPA FORM 7710-37

1. Secondary processors of asbestos must complete Part I and II of the form. Each plant site or manufacturing facility must be reported separately. If you process bulk asbestos fiber to make any of your products at this plant site, then you are a PRIMARY PROCESSOR and you should report this plant site on EPA Form 7710-36.
2. Importers of asbestos mixture(s) or article(s) containing asbestos components must complete Part I and III of the form. If you import bulk asbestos fiber, then you should report all importation activities on EPA Form 7710-36.
3. Those who are both secondary processors and importers must complete Parts I, II and III of the form.

DEFINITIONS

1. Asbestos Mixture - means a mixture which contains bulk asbestos or another mixture. Section 2 below lists typical terms for asbestos mixtures.

2. Asbestos Component—means any asbestos mixture, including any finished product containing an asbestos mixture, which is incorporated into an article. Section I below lists typical terms for products made from asbestos mixtures and components. Some examples of asbestos components are: asbestos paper in a hair-dryer; asbestos-reinforced plastic cabinet of a television; asbestos textile that is part of a particular type of garment.
3. Secondary Processor of Asbestos—means a person who processes an asbestos mixture.
4. Importer of Asbestos Mixtures or Articles Containing Asbestos Component(s)—means a person who imports merchandise that contains asbestos into the customs territory of the United States. Where there are two or more "importers" for the same shipment, the Principal rather than the Agent should report if possible.

PART I COMPANY INFORMATION

Enter the name, address, and phone number of your company. Enter the name of the principal technical contact who is either responsible for the completion of this form, or has sufficient knowledge of its content to respond to questions posed by EPA. If you are reporting as an importer, check the appropriate box to indicate that you are either the Principal importer or the Agent for the Principal.

PART II SECONDARY PROCESSOR END PRODUCTS

End Products(s)—Locate in Section 1 the name of the product subcategory that most specifically describes your end product. In this column, enter the code number for the end product you make and write in the generic name for the product. If you are reporting a product that is not listed, enter the code for "other" that is listed under the most specific general category of products and write in the generic name. Report each end product on separate lines. For example, if you make appliances and are reporting toasters, enter "114" and "toaster".

Asbestos Mixture(s)—For each end product, locate in Section 2 the name of the asbestos mixture that most specifically describes the asbestos mixture that you incorporate into the end product. In this column, enter the code number for the asbestos mixture and write in the generic name. If you incorporate more than one asbestos mixture into a single end product, then use as many lines as necessary to report all asbestos mixtures in the end product. For example, if you incorporate asbestos millboard into your toaster, your entries would be as follows.

End Product	*Asbestos Mixture*
114 toaster	03 millboard

Quantity of Asbestos Mixture Consumed—Opposite each asbestos mixture that is listed, enter the quantity of each mixture that you consumed in 1980. Specify the quantity according to the unit of measure listed in Section 2. If the unit of measure is not listed, report the quantity in short tons. If your records do not permit you to list the quantities consumed for separate end products, then report the total amount of each type of asbestos mixture and enter "T" (for total) next to the figure.

PART III IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING AN ASBESTOS COMPONENT

Asbestos Mixture or Article—For each type of imported product, locate in either Section 1 or Section 2 the name that most specifically describes the product you import. Enter the code number and generic name for the imported product.

Quantity of Asbestos Mixture(s) or Article(s) Imported—For each product listed, record the total annual quantity imported in 1980. Specify the quantity according to the unit of measure listed in Section 2, if possible, or according to the unit of measure as reported to the U.S. Customs Service upon entry of the merchandise into the United States.

Description of Asbestos Components in Article—List all asbestos components in the imported article by entering the name of the asbestos component opposite the name of the article. If the reported product is an asbestos mixture listed in Section 2, then you should not complete this description.

SECTION 1 - TYPICAL TERMS FOR PRODUCTS MADE OF ASBESTOS MIXTURES

AUTOMOTIVE AND FRICTION PRODUCTS
101. Drum brake lining (light-medium vehicle)
102. Disc brake pads (light-medium vehicle)
103. Disc brake pads (heavy vehicle)
104. Brake block (heavy equipment)
105. Clutch facings (all)
106. Automatic transmission friction components
107. Friction materials (industrial and commercial)
108. Custom automative body filler
109. Transmissions
110. Mufflers
111. Radiator top insulation
112. Radiator sealant
113. Other (specify generic name)

APPLIANCES
114. Applicance, industrial and consumer (specify generic name)

CONSTRUCTION PRODUCTS
115. Boiler and furnace baffles
116. Decorated building panels
117. A/C sheet
118. Flexible air conductor
119. Hoods and vents
120. Portable construction building
121. Roofing, saturated
122. Roof shingles
123. Wallboard
124. Wall roofing panels
125. Other (specify generic name)

CLOTHING
126. Aprons
127. Boots
128. Gloves and mittens
129. Hats and helmets
130. Overgaitors
131. Suits
132. Other (specify generic name)

FLOOR COVERINGS
133. Vinyl-asbestos floor tile
134. Asbestos-felt-backed sheet vinyl flooring

ELECTRICAL PRODUCTS AND COMPONENTS
135. Cable insulation
136. Electronic motor components
137. Electrical resistance supports
138. Electrical switchboard
139. Electrical switch supports
140. Electrical wire insulation
141. Motor armature
142. Other (specify generic name)

FIRE AND HEAT SHIELDING EQUIPMENT AND COMPONENTS
143. Arc deflectors
144. Fire doors
145. Fireproof absorbent paper
146. Heat shields
147. Molten metal handling equipment
148. Oven and stove insulation
149. Pipe wrap
150. Stove lining, wood and coal
151. Stove pipe rings
152. Sleeves
153. Thermal insulation
154. Other (specify generic name)

GASKETS
155. Sheet gasketing, rubber encapsulated beater addition
156. Sheet gasketing, rubber encapsulated compressed
157. Compressed sheet gasketing (other)
158. Metal reinforced gaskets
159. Automotive gaskets
160. Other (specify generic name)

MARINE EQUIPMENT AND SUPPLIES
161. Caulks, marine
162. Liners, pond or canal
163. Marine bulkheads
164. Other (specify generic name)

PAINTS, COATINGS, SEALANTS, AND COMPOUNDS
165. Asphaltic compounds
166. Automotive/truck body coatings
167. Buffing and polishing compounds
168. Caulking and patching compounds
169. Drilling fluid
170. Flashing compounds
171. Furnace cement
172. Glazing Compounds
173. Plaster and stucco
174. Pump, valve, flange, and tank sealing components
175. Roof coatings
176. Textured paints
177. Tile cement
178. Other (specify generic name)

TEXTILE AND FELT PRODUCTS (other than clothing)
179. Aluminized cloth
180. Rope or braiding
181. Yarn, lap, or roving
182. Wicks
183. Bags
184. Belting
185. Blankets
186. Carpet padding
187. Commercial/industrial dryer felts
188. Draperies
189. Drip cloths
190. Fire hoses
191. Ironing board pads and insulation
192. Mantles, lamp or catalytic heater
193. Packing and packing components
194. Piano and organ felts
195. Rugs
196. Tape
197. Theater curtains
198. Umbrella
199. Other (specify generic name)

MISCELLANEOUS PRODUCTS
200. Aerial distress flares
201. Acoustical products
202. Ammunition wadding
203. Asbestos-reinforced plastic products
204. Ash trays
205. Baking sheets
206. Blackboards
207. Candlesticks
208. Chemical tanks and vessels
209. Filters
210. Grommets
211. Gun grips
212. Jewelry making equipment
213. Kilns
214. Lamp sockets
215. Light bulbs (all types)
216. Linings for vaults, safes humidifiers, and filing cabinets
217. Phonograph records
218. Pottery clay
219. Welding rod coatings
220. Other (specify generic name)

SECTION 2 - TYPICAL TERMS FOR ASBESTOS MIXTURES

PAPERS, FELTS, OR RELATED PRODUCTS	
01. commerical paper	short tons
02. rollboard	short tons
03. millboard	short tons
04. pipeline wrap	short tons
05. beater-add gasketing paper	short tons
06. high-grade electrical paper	short tons
07. unsaturated roofing felt	short tons
08. saturated roofing felt	short tons
09. flooring felt	short tons
10. corrugated paper	short tons
11. specialty paper (specify)	short tons
FLOOR COVERINGS	
12. vinyl-asbestos floor tile	square yards
13. asbestos-felt-backed vinyl flooring	square yards
ASBESTOS-CEMENT PRODUCTS	
14. A/C pipe and fittings	short tons
15. A/C sheet, flat	100 square feet
16. A/C sheet, corrugated	100 square feet
17. A/C shingle	squares
FRICTION MATERIALS	
18. drum brake lining (light-medium vehicle)	pieces
19. disc brake pads (light-medium vehicle)	pieces
20. disc brake pads (heavy equipment)	pieces
21. brake block (heavy equipment	pieces
22. clutch facings (all)	pieces
23. automatic transmissions friction components	pieces
24. friction materials (industrial and commerical)	pieces
TEXTILES	
25. cloth	pounds
26. thread, yarn, lap, roving, cord, rope or wick	pounds
OTHER PRODUCTS	
27. sheet asketing (other than beater-add)	square yards
28. packing	pounds
29. paints and suface coatings	gallons
30. adhesives and sealants	gallons
31. asbestos-reinforced plastics	pounds
32. insulation materials not elsewhere classified (n.e.c.)	_____
33. mixed or repackaged asbestos fiber	short tons
34. other (n.e.c.)	_____

BILLING CODE 6560-50-C

(b) [Reserved]

§ 763.78 Sunset provision.

All requirements of this rule will terminate five years after promulgation of this rule. This provision is not a defense to any enforcement action based on noncompliance which occurred during the effective period of this rule.

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